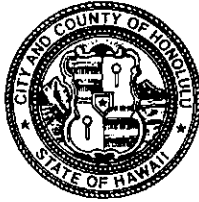


DEPARTMENT OF ENTERPRISE SERVICES
GOLF COURSE DIVISION * HONOLULU ZOO * NEAL S. BLAISDELL CENTER * WAIKIKI SHELL
CITY AND COUNTY OF HONOLULU
777 WARD AVENUE · HONOLULU, HAWAII 96814-2166
PHONE: (808) 768-5400 * FAX: (808) 768-5433 * INTERNET: www.honolulu.gov/des

KIRK CALDWELL
MAYOR



TRACY S. KUBOTA
ACTING DIRECTOR

GARRICK K. IWAMURO
ACTING DEPUTY DIRECTOR

March 9, 2015

The Honorable Ann H. Kobayashi, Chair
and Members
Committee on Budget
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

RECEIVED
2015 MAR -9 P 3:12
CITY COUNCIL
HONOLULU, HAWAII

Dear Chair Kobayashi and Councilmembers:

SUBJECT: Response to Budget Committee Questions on
March 4, 2015

Attached are the responses to your questions that were asked at the March 4,
2015 Budget Committee meeting.

Should you have any questions, please call me at 768-5447.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracy S. Kubota".

Tracy S. Kubota
Acting Director

RECEIVED
CITY CLERK
C & C OF HONOLULU
2015 MAR -9 PM 3:39

Budget Committee Questions of March 4, 2015.

Attachment

Councilmember Ann Kobayashi

Question #1.

Request a copy of the Honolulu Zoo gift shop/food management agreement.

Answer #1.

Agreement attached.

Councilmember Ann Kobayashi and Councilmember Trevor Ozawa

Question #2.

Request a copy of the Honolulu Zoo-Honolulu Zoo Society cooperative agreement.

Answer #2.

Agreement attached.

Councilmember Ann Kobayashi

Question #3.

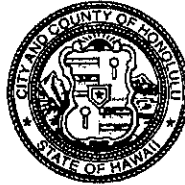
What is the status of the Zoo Animal Purchase Fund? The 2014 CAFR notes that "Effective July 1, 2013, the Zoo Animal Purchase Fund was combined with the General Fund?"

Answer #3.

The Zoo Animal Purchase Fund still exists as a special fund. It has been included in the General Fund in the 2014 CAFR for accounting purposes only.

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU

DIVISION OF PURCHASING
530 SOUTH KING STREET, ROOM 115 • HONOLULU, HAWAII 96813
TELEPHONE: (808) 523-4867 • FAX: (808) 523-4847



JEREMY HARRIS
MAYOR

ROY K. AMEMIYA, JR.
DIRECTOR

CHARLES M. KATSUYOSHI
PURCHASING ADMINISTRATOR

January 27, 2000

TO: Alvin Au, Director, Department of Enterprise Services
FROM: Charles M. Katsuyoshi, Purchasing Administrator
SUBJECT: Honolulu Zoo

Attached is a fully executed copy of Contract No. 13275, for the Management and Operation of the Food and Gift Shops and the Scheduling and Management of Special Events at the Honolulu Zoo for the Department of Enterprise Services, City and County of Honolulu, Honolulu, Hawaii.

A copy of the contract has been forwarded to your fiscal office.


CHARLES M. KATSUYOSHI
Purchasing Administrator

CMK:eu

Attach.

cc: Internal Control

00-0072
1/28/00 CP

DEPT. OF ENTERPRISE SERVICES

200 JAN 29 PM 2:43

January 27, 2000

**Mr. T. Kevin McNicholas
Service Systems Associates, Inc.
2001 Steele Street
Denver, CO 80208-5737**

Dear Mr. McNicholas:

Attached are two (2) fully executed copies of Contract No. 13275, awarded to you for the Management Agreement for the Management and Operation of the Food and Gift Shops and the Scheduling and Management of Special Events at the Honolulu Zoo for the Department of Enterprise Services, City and County of Honolulu, Honolulu, Hawaii.

One copy is to be forwarded to your bonding company and the other copy is to be retained for your files.

Very truly yours,



**CHARLES M. KATSUYOSHI
Purchasing Administrator**

CMK:eu

Attach.

cc: Department of Enterprise Services

STATE OF HAWAII — DEPARTMENT OF TAXATION
TAX CLEARANCE APPLICATION
PLEASE TYPE OR PRINT CLEARLY

1. APPLICANT INFORMATION:

Applicant Service System Associates, Inc
Address THE Pavilion at City Park, 2001 Steele Street
City/State/Zip Code Denver Colorado 80205-5737
DBA/
Trade Name _____

2. TAX IDENTIFICATION NUMBER(S):

HAWAII GENERAL EXCISE ID # N O N E

FEDERAL EMPLOYER ID # 9 3 - 0 9 9 6 5 2 8

SOCIAL SECURITY # _____

3. APPLICANT IS A/AN: (CHECK ONLY ONE BOX)

- | | | |
|--|--|--|
| <input type="checkbox"/> CORPORATION | <input checked="" type="checkbox"/> S CORPORATION | <input type="checkbox"/> TAX EXEMPT ORGANIZATION |
| <input type="checkbox"/> INDIVIDUAL | <input type="checkbox"/> PARTNERSHIP | <input type="checkbox"/> ESTATE <input type="checkbox"/> TRUST |
| <input type="checkbox"/> LIMITED LIABILITY COMPANY | <input type="checkbox"/> LIMITED LIABILITY PARTNERSHIP | |

4. THE TAX CLEARANCE IS REQUIRED FOR:

- | | |
|--|---|
| <input checked="" type="checkbox"/> CITY, COUNTY, OR STATE GOVERNMENT CONTRACT IN HAWAII * | <input type="checkbox"/> LIQUOR LICENSE * |
| <input type="checkbox"/> REAL ESTATE LICENSE | <input type="checkbox"/> CONTRACTOR LICENSE |
| <input type="checkbox"/> FINANCIAL CLOSING | <input type="checkbox"/> PROGRESS PAYMENT |
| <input type="checkbox"/> HAWAII STATE RESIDENCY | <input type="checkbox"/> FEDERAL CONTRACT |
| <input type="checkbox"/> SUBCONTRACT | <input type="checkbox"/> OTHER _____ |
| | <input type="checkbox"/> BULK SALES |
| | <input type="checkbox"/> PERSONAL |
| | <input type="checkbox"/> LOAN |

* IRS APPROVAL STAMP IS FOR PURPOSES INDICATED BY ASTERISK.

5. NO. OF CERTIFIED COPIES REQUESTED:

20

Not Applicable For
Completion/Final Payment

6. SIGNATURE:

T. Kevin Manicholas

PRINT NAME

President

PRINT SPECIFIC TITLE: Corporate Officer, General Partner, Individual (Sole Proprietor)

SIGNATURE

DATE

TELEPHONE

FAX

POWER OF ATTORNEY. If submitted by someone other than a Corporate Officer, General Partner, or Individual (Sole Proprietor), a power of attorney (State of Hawaii Department of Taxation Form N848) must be submitted with this application. If a Tax Clearance is required from the Internal Revenue Service, IRS Form 8821, or IRS Form 2848 is also required. Applications submitted without proper authorization will be sent to the address of record with the taxing authority. UNSIGNED APPLICATIONS WILL NOT BE PROCESSED.

PLEASE TYPE OR PRINT CLEARLY — THE FRONT PAGE OF THIS APPLICATION BECOMES THE CERTIFICATE UPON APPROVAL.

SEE PAGE 2 ON REVERSE & INSTRUCTIONS. Failure to provide required information on page 2 of this application or as required in the separate instructions to this application will result in a denial of the Tax Clearance request.

FOR OFFICE USE ONLY

BUSINESS START DATE IN HAWAII
IF APPLICABLE
/ /

HAWAII RETURNS FILED
IF APPLICABLE
19__ 19__ 19__

STATE APPROVAL STAMP

APPROVED

DEC 16 1999

per [Signature]
Department of Taxation

INTERNAL REVENUE SERVICE

APPROVED

DEC 27 1999

per [Signature]
Pacific Northwest District

CERTIFIED COPY STAMP

MANAGEMENT AGREEMENT

THIS AGREEMENT is made and entered into this 24th day of January, 2000, ~~1999~~ by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, hereinafter called the "City", and **SERVICE SYSTEMS ASSOCIATES, INC.**, an Iowa corporation, whose principal place of business and mailing address is The Pavilion at City Park, 2001 Steele Street, Denver, Colorado, 80205-5737, hereinafter called the "Contractor";

WITNESSETH:

WHEREAS, the City desires to enter into a Management Agreement for the Management and Operation of the Food and Gift Shops and the Scheduling and Management of Special Events at the Honolulu Zoo for the Department of Enterprise Services, City and County of Honolulu; and

WHEREAS, the City issued a Request for Proposals (RFP) on June 21, 1999 to obtain a Contractor to Manage and Operate the Food and Gift Shops and to Schedule and Manage Special Events at the Honolulu Zoo; and

WHEREAS, the City issued Addendum No. 1 on July 27, 1999, and Addendum No. 2 on August 5, 1999, to the RFP, as amended; and

WHEREAS, on August 19, 1999, the Contractor submitted its initial proposal in response to the RFP, as amended; and

WHEREAS, on November 1, 1999, the Contractor submitted its best and final offer in response to the City's request for best and final offers; and

WHEREAS, the City has selected the proposal submitted by the Contractor for award of a management agreement pursuant to the RFP;

NOW, THEREFORE, in consideration of the above and the mutual promises and the terms, conditions, and provisions contained herein, the City and the Contractor agree as follows:

1. **INCORPORATION BY REFERENCE: PRECEDENCE:** The RFP, as amended, is attached hereto as Attachment B and incorporated herein and made a part hereof.

The proposal submitted on August 19, 1999, and best and final offer submitted on November 1, 1999 by the Contractor, are attached hereto as Attachment A, and incorporated herein and made a part hereof.

In the event of any conflict between the provisions of Attachments A, B, and this Agreement, this Agreement shall govern over Attachments A and B. In the event of any conflict between Attachment A and Attachment B, Attachment B shall govern over Attachment A.

Notwithstanding the order of precedence of provisions as specified above, the following exceptions, as noted by the Contractor in its proposal, are accepted by the City:

- a. In addition to the provisions of Section 27, TERMINATION FOR CONVENIENCE, the City agrees to be responsible for the un-amortized capital investment of the Contractor pursuant to page 44, CAPITAL INVESTMENT SUMMARY, of the Contractor's initial proposal.
 - b. The City agrees to the term of the contract as proposed by the Contractor's best and final offer. The contract shall begin on the date designated by the City in its Notice to Proceed for Design and Construction.
2. **PAYMENTS:** The Contractor agrees to pay the City at the payments offered in its Best and Final Offer, dated November 1, 1999. In addition, payments shall be as follows:
 - a. **Minimum Monthly Payment.** The Contractor shall pay to the City, in advance, without notice or demand, the minimum monthly on the twenty-fifth day of the month preceding the month for which the payment is applicable.

If commencement of the operation of the agreement is other than the first day of the calendar month, the minimum payment for less than the full month of operation at commencement and termination of agreement shall be according to the following formula:

$$\frac{\text{No. of Days of Operation}}{\text{No. of Days in a Month}} \times \text{Minimum Monthly payment} = \text{Minimum Payable}$$

The payment for the first month's payment shall be made within five (5) days after the concession is in operation.

- b. Percentage Payment. The Contractor shall pay to the City, within ten (10) working days after the close of each month, that portion of the percentage payment (being the percentages bid multiplied by the Contractor's monthly gross incomes) in excess of the minimum monthly payment for each and every preceding month, ~~plus the percentage payment for catering at the Blaisdell Center.~~ ^{BM} For purposes of calculating the monthly gross income over which the percentage is applied, the **STATE GENERAL EXCISE TAX SHALL NOT BE INCLUDED IN THE MONTHLY GROSS INCOME.**
- c. Payment. All checks for payment under this agreement shall be made to the "City Director of Budget and Fiscal Services" and submitted to the Division of Treasury, Current Collections, City and County of Honolulu, 530 South King Street, Honolulu, Hawaii 96813. Failure to pay any part of the payment when due shall constitute a breach of the contract and shall be grounds for termination of the contract by the City. Without prejudice to any of the other remedies herein given the City, interest at the rate of 1 percent simple interest per month or fraction thereof shall be assessed for any overdue payment of payment.
3. DESIGN AND CONSTRUCTION PERIOD. Upon execution of the contract, the Officer in Charge or an authorized representative of the Officer in Charge shall give a "Notice to Proceed for Design and Construction" to the Contractor for the design and construction phase to renovate, alter, change and/or modify the present food service building, gift shop building, and African snack area.
4. NOTICE TO PROCEED FOR MANAGEMENT AGREEMENT. The "Notice to Proceed for Management Agreement" for the contract will be issued in accordance with the provisions of Section H in the section of the RFP entitled "General".
5. INDEPENDENT CONTRACTOR: The parties agree that the Contractor is not an employee of the City for any purpose whatsoever. The Contractor is an independent contractor at all times during the performance of this agreement.
6. PERFORMANCE BOND. Pursuant to Section H, PERFORMANCE BOND, of the Special Instructions to Bidders, the Contractor shall give as security for the full and faithful performance of the contract, a bond in an amount equal to two (2) month's of the minimum monthly fee rounded to the next highest hundred dollars.

a. The performance bond during the Design and Construction Period shall be \$10,000.00.

b. The performance bond after the Design and Construction Period ends until the end of the contract term shall be ~~\$20,000.00.~~ 20,000.00 *km*

7. **COMPLETE AGREEMENT:** This agreement embodies the entire contract between the parties and shall not be altered except in writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY AND COUNTY OF HONOLULU

By: *Carroll Takahashi* DEPUTY DIRECTOR
Director of Budget and Fiscal Services *Carroll*

SERVICE SYSTEMS ASSOCIATES, INC.

By: *T. Kennedy*
Authorized Signature

Title: *President*

APPROVED AS TO FORM AND LEGALITY

Chunadul
Deputy Corporation Counsel



SERVICE SYSTEMS ASSOCIATES
FOOD SERVICE AND MERCHANDISING FOR ZOOS AND AQUARIUMS

November 1, 1999

Mr. Charles Katsuyoshi, Purchasing Administrator
530 S. King Street
Room 115
Honolulu, Hawaii 96813

Dear Mr. Katsuyoshi,

In response to Mr. Au's request, we are submitting our "Best and Final Offer" for the provision of visitor services at the Honolulu Zoo. The following tables below reflects an *increase* in commissions paid to the City from our last response.

Commission Rent to be paid to the City

INTERIM PERIOD	RENT
- First 2 years or a fraction thereof (not to exceed 2 years)	- Minimum Guarantee of \$60,000.00 per year, or, - 5% rent on all categories, whichever is greater

CONTRACT YEARS 3-7 (We must have the full seven years in order to amortize our investment)	MINIMUM GUARANTEE \$120,000.00
--	-----------------------------------

or,

CONTRACT YEARS 3-7	
SALES	RENT
All receipts up to \$1,000,000	7%
Receipts from \$1,000,001 up to \$1,600,000	9%
Receipts from \$1,600,001 up to \$2,000,000	13%
Receipts over \$2,000,000	21%

Whichever is greater.

In addition to the proposed increased rent percentages listed above, Service Systems Associates would also like to restate our commitment to investing approximately \$500,000.00 in capital improvements for the food service and merchandise programs in the Honolulu Zoo. Because of this, a seven year term is necessary.

Sincerely,

T. Kevin McNicholas
President



(corporation)

ColoNADO
STATE OF HAWAII

CITY AND COUNTY OF HONOLULU
DENVER

ss.

On this 28th day of December, 1999, before me appeared

T. Kevin Mc Nicholas

and

to me personally known, who, being by me duly sworn, did say that they are the

President

and

respectively, of Service Systems Associates, Inc.

and that the seal affixed to the foregoing instrument is the corporate seal of said corporation;

and that said instrument was signed and sealed in behalf of said corporation by authority of its

Board of Directors, and the said President and

acknowledged said instrument to be the free act
and deed of said corporation.



Notary Public, State of Hawaii, ColoNADO

My Commission Expires 3/29/2001

(partnership)

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

ss.

On this _____ day of _____, 19____, before me personally
appeared _____, one of the partners of _____

to me known to be the person described in and
who executed the foregoing instrument and acknowledged that he executed the same as the
free act and deed of said partnership.

Notary Public, State of Hawaii

My Commission Expires _____

COMMERCE BANK

15305 East Colfax Avenue

Aurora, Colorado 80011

303.344.5202

Fax 303.364.7636

Member FDIC

July 22, 1999

To Whom It May Concern:

I am pleased to provide a resume of our experience with Service System Associates, Inc.

Service System Associates, Inc. ("SSA") and its majority owner and president, Kevin McNicholas, have been valued customers of Commerce Bank since 1976. Over the term of our twenty three year business relationship, we have extended loans up to a seven figure amount on a secured basis to SSA and Kevin McNicholas. All loans have been handled satisfactorily and repaid as agreed. In addition, SSA and related companies maintain a satisfactory deposit relationship which carries a medium six figure average balance. We would look favorably on additional loan requests from SSA, if needed.

SSA and Kevin McNicholas are highly regarded by us because of their consistent performance, integrity, and SSA's strong management team. I highly recommend them to you.

Sincerely,



James C. Lowien
President & CEO

REQUEST FOR PROPOSALS DOCUMENT NO. 13275
FOR THE
MANAGEMENT AND OPERATION OF THE FOOD AND GIFT SHOPS
AND THE SCHEDULING AND MANAGEMENT OF SPECIAL EVENTS
AT THE HONOLULU ZOO

Honolulu, Hawaii

August 12, 1999

ADDENDUM NO. 3

TO ALL PROSPECTIVE BIDDERS:

The following changes are hereby made and incorporated as part of Proposal Document No. 13275:

In the beginning section of the RFP entitled "General", page 11, Section Q, EVALUATION AND SELECTION OF PROPOSAL:

- I. Change the relative importance of the criterion of sub-section 1 and 3 as follows:
 1. Offeror's qualifications, experience and resources: Change from "(35%)" to "(30%)".
 2. Revenue Sharing Plan: Change from "(30%)" to "(35%)".
- II. Under sub-section 2, Offeror's plans with milestones, in the second sub-factor, between the words plan and renovate, delete "and" and in lieu thereof, insert "to".
- III. Under sub-section 3, Revenue Sharing Plan, add the following sub-factor:
 - "- City desires, as a minimum, a plan for higher gross receipts for both the food and soft drinks operation and the gift shop operation. The reported gross receipts for the food and soft drinks operation for fiscal year 1998-99 was \$362,450.00. The reported gross receipts for the gift shop operation for fiscal year 1997-98 was \$382,182.00."


CHARLES M. KATSUYOSHI
Purchasing Administrator

REQUEST FOR PROPOSALS DOCUMENT NO. 13275
FOR THE
MANAGEMENT AND OPERATION OF THE FOOD AND GIFT SHOPS
AND THE SCHEDULING AND MANAGEMENT OF SPECIAL EVENTS
AT THE HONOLULU ZOO

Honolulu, Hawaii

August 5, 1999

ADDENDUM NO. 2

TO ALL PROSPECTIVE BIDDERS:

I. The following changes are hereby made and incorporated as part of Proposal Document No. 13275:

A. In the beginning section of the RFP entitled "General":

1. Page 7, delete Section I.6 in its entirety and in lieu thereof, insert the following Sections I.6 and I.7.
 - a. Vending Machines. the furnishing and placement of all vending machines must be approved by the Officer in Charge. Vending machines shall be subject to the provisions of Section E.18 of this General section.
 - b. Public Pay Telephones. The City reserves the right to provide for the installation of public pay telephones on the concession premises in locations to be approved by the Officer in Charge. All commissions from the telephones shall belong to the City under its contract with the Hawaiian Telephone Company.
2. Page 7, Section J, SURRENDER OF PREMISES UPON TERMINATION:
 - a. In the first paragraph, line 1, delete "other than for the breach thereof," and in lieu thereof, insert "other than for the termination for default or the termination for convenience,".
 - b. In the second paragraph, line 1, delete "other than for breach", and in lieu thereof, insert "other than for the termination for default or the termination for convenience,".
3. Page 8, Section M.3, in line 3, delete "sixty (60) calendar days" and in lieu thereof, insert "ninety (90) calendar days".
4. Page 14, at the bottom of the page, add the following section:

"V. PRECEDENCE OF PROVISIONS

In the event of any conflict between the provisions of the sections contained in this RFP document as specified below, the governing provision to resolve any such conflict shall be based on the following order of importance of the sections. The relative importance of the sections are listed in descending order of importance.

1. General (section).
2. Special Instructions to Offerors.
3. General Terms and Conditions.
4. General Instructions to Offerors."

B. In the SPECIAL INSTRUCTIONS TO OFFERORS:

Page 2, Section G, PERFORMANCE BOND, delete the paragraph in its entirety and in lieu thereof, insert the following paragraph:

"The Offeror shall give as security for the full and faithful performance of the contract by the Offeror, a bond in an amount equal to two (2) month's monthly fee rounded to the next highest hundred dollars. For the purpose of computing the performance bond, the monthly fee shall be the minimum monthly fee bid. The coverage shall be for the term of the contract.

Notwithstanding any other provisions herein, the performance bond may either be for the term of the contract, in increments of twelve-month periods, or in incremental periods acceptable to the Director of Budget and Fiscal Services. The bond, if other than cash, shall have a surety or sureties thereon as prescribed by HRS Section 102-12. Such surety or sureties shall be subject to the approval of the Director of Budget and Fiscal Services and shall be required to justify as prescribed by said HRS Section 102-12. The bond to be submitted shall be the Performance Bond attached hereto.

II. The following are answers to questions posed at pre-proposal meeting held on July 13, 1999.

Q. Who is the City's Contracting Officer?

A. The contracting officer is the Director, Department of Budget and Fiscal Service.

Q. Who is the City's Office in Charge?

A. The officer in charge is the Director, Department of Enterprise Services.

Q. Who does the clause "shall be approved by the City" refer to?

A. The approval authority is the Director, Department of Enterprise Services, and/or Director, Department of Budget and Fiscal Services.

General (Section)

Q. Page 3, Section E.6. Please define "trash control" for areas of responsibility, specifically the trash removal process?

A. The Contractor shall be responsible to pickup and dispose of trash in the areas or responsibility. This includes providing an appropriate number of trash receptacles in the concession areas, emptying the receptacles when full, and contracting with a trash removal company to provide dumpster(s) and service the dumpster(s) regularly.

Q. Page 3, Section E.7. We assume that revenue from stroller rental, locker rental, etc. is included in the contractors operation. Is this correct?

A. Yes, all revenue generating items will be part of the contractor's operation.

Q. Page 3, Section E.4. How will the electricity cost be prorated if not separately metered?

A. The food service building has a separate meter. The gift shop does not have a separate meter in the building where it is located, therefore, the electrical bill will be prorated based on the square footage of the gift shop.

Q. Page 5, Section E.17. Why is this necessary? Please clarify the purpose of this item. Is this intended to apply to all items or only for a specific purpose such as trash reduction?

A. The main purpose of this item is for the safety of the animals. The prohibition against plastic cup lids and straws is to prevent them from getting into the animal exhibits and being ingested by the animals. Any denial of any item will be fully justified in writing by the City.

- Q. Page 5, Section E.18. Is this only for contracts that are in place as of the contract date or does it also apply to any future contracts that the City may decide to enter into?
- A. It will apply to current and any future contracts the City may enter into. However, the City is not currently contemplating any new contract other than the pouring rights.
- Q. Page 6, Section H. As this clause is written it is unacceptable. A "Buy Back Provision" of the investment needs to be recognized.
- A. This section must remain as written. Section 27, TERMINATION FOR CONVENIENCE, of the General Terms and Conditions, addresses compensation procedures.
- Q. Page 6, Section I.2. Why is the review and approval of prices required?
- A. It shall be the policy of the City that prices shall not be higher than the average price charged for the same quality merchandise at comparable facilities or type of business. The City does not intend to set prices but merely ensure that the public is not charged a higher price than the normal prevailing prices.
- Q. Page 8, Section M.3. We request a minimum of 90 days for submittal of plans and drawings of the renovations with 120 days being preferred.
- A. We will grant the change to ninety (90) calendar days.
- Q. Page 12, Section S. In the second paragraph, line 5, what does the City deem, "reasonably appropriate"?
- A. "Reasonably appropriate" means the City will assess the exposure of risk and the City, at its discretion, will require the Offeror to provide adequate protection to the City.

SPECIAL INSTRUCTIONS TO OFFERORS

- Q. Page 2, Section G. Will the City accept an Annual Renewable Bond for the security of full and faithful performance?
- A. Yes, subject to the approval of bond by the Director of Budget and Fiscal Services.
- Q. Page 3, Section H.5. Will the City accept a Letter of Commitment from a mainland financial institution?
- A. Yes, subject to the approval of the Letter of Commitment by the Director of Budget and Fiscal Services.

MISCELLANEOUS

- Q. In the event of a specialty menu item, does the contractor, with the approval of the Director, have the ability to subcontract to a 3rd party? The money paid by the subcontractor would be included in the primary contractor receipts.
- A. Yes, however, the Officer in Charge or an authorized representative of the Officer in Charge will approve the requests on a case-by-case basis.
- Q. How many satellite locations are required?
- A. Satellite locations are not required, however, the City will evaluate the Offeror's proposal to provide satellite locations.
- Q. Who comprises the Evaluation Panel?
- A. Various individuals selected by the Director of Enterprise Services and approved by the Director of Budget and Fiscal Services.
- Q. The terms of the first portion of the RFP are not complete and in some cases conflict with the general terms that appear at the end of the RFP (which the City indicates may be incorporated as

part of the complete contract). When will bidders be able to see a proposed form of the actual contract?

- A. The question regarding conflicting provisions in the RFP are addressed in this Addendum in the section, PRECEDENCE OF PROVISIONS. The agreement PROPOSED MANAGEMENT AGREEMENT is only a sample. The wording of the final management agreement will be based on the proposal of the successful offeror.
- Q. Regarding the renovations of the existing food concession, gift shop and African snack area, if the renovations are done in stages, when does the notice to proceed start?
- A. The notice to proceed starts when all renovations to all three locations are 100% complete and all are fully operational. It is up to the Offerors to propose in their offer a compensation plan that covers the construction period and partly completed facilities.
- Q. Who gets the commission on pay telephone and other vending machines?
- A. All pay telephones are installed at the option of the City and commissions go to the City. Other vending machines can be installed with the approval of the Officer in Charge or an authorized representative of the Officer in Charge. Commissions on these machines are part of the contractor's proposal.
- Q. Does the contractor need to get any special state permits for the construction?
- A. No, the Zoo is located in the Diamond Head special design district, however, only City permits are required.
- Q. Does the contractor have exclusive rights for any food and beverage served at the Zoo?
- A. Yes, the contractor has the exclusive rights. However, the public will be allowed to bring in their own picnic lunches and soft drinks if they so desire. No other commercial caterer shall be allowed to set up in the Zoo unless the contractor relinquishes their rights to that caterer.
- Q. Explain the relationship between the City and the Honolulu Zoological Society and how this affects the scheduling of special events.
- A. The Honolulu Zoological Society is the City recognized non-profit organization that benefits the Zoo. There is an operating agreement in place with the society and the City detailing the relationship between the two organizations. All special events during normal operating hours can be scheduled by coordination with the zoo director. However, all after hour events must be promoted as fund raisers for the Zoological Society, with a portion of the proceeds being donated to the society.
- Q. Can information on zoo attendance and gross revenue figures on the existing concession be given to the proposers?
- A. Yes, the attendance and reported gross revenues are attached, however the City neither represents nor warrants the accuracy of any information provided to the proposers and that proposers use of any information is at their own risk.
- Q. When will a decision be made on the proposals?
- A. We cannot give a definitive answer. The length of time for the evaluation committee to render a decision depends on several factors, such as, whether discussions will need to be conducted with Offerors and the number of acceptable or potentially acceptable offers received that need to be evaluated.
- Q. The City has a Capital Improvement Project in the planning stage for the Honolulu Zoo, which includes a restaurant. Prospective Offerors asked how will this effect this agreement.
- A. The City does not feel that the restaurant will be completed during the period of this contractor. Also, the Contractor shall have exclusive rights for any food and beverage served at the Zoo. However, if a restaurant is built and completed during the term of this agreement, this does not

mean that the agreement will be modified to allow or require the Contractor to operate the restaurant. The City may terminate this agreement, not open the restaurant during the term of this agreement, or take any other option available at that time.

Q. What can be sold at the gift shop?

A. The Zoo Director mentioned that the City prefers zoo or nature related items be sold at the Gift Shop. The Contractor must receive prior approval from the Officer in Charge or an authorized representative of the Officer in Charge before selling items at the gift shop which are not zoo or nature related.

Q. Is there a deadline for requests for postponement of the time and date sealed proposals will be received.

A. There is no provision defining a cutoff date. The prospective offeror may make a request with justification. The City will determine whether to postpone the bid opening date.



CHARLES M. KATSUYOSHI
Purchasing Administrator

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REQUEST FOR PROPOSALS DOCUMENT NO. 13275
FOR THE
MANAGEMENT AND OPERATION OF THE FOOD AND GIFT SHOPS
AND THE SCHEDULING AND MANAGEMENT OF SPECIAL EVENTS
AT THE HONOLULU ZOO

Honolulu, Hawaii


July 27, 1999

ADDENDUM NO. 1

TO ALL PROSPECTIVE BIDDERS:

The following change is hereby made and incorporated as part of Proposal Document No.
13275:

The time and date sealed proposals will be received up to has been changed from "4:00 p.m.,
AUGUST 3, 1999" to "4:00 p.m., AUGUST 19, 1999".



CHARLES M. KATSUYOSHI
Purchasing Administrator

13275

NOTICE OF REQUEST FOR PROPOSALS

SEALED PROPOSALS will be received up to 4:00 p.m., on AUGUST 3, 1999, in the Office of the Division of Purchasing, Department of Budget and Fiscal Services, City Hall, City and County of Honolulu, Honolulu, Hawaii for the **MANAGEMENT AND OPERATION OF THE FOOD AND GIFT SHOPS AND THE SCHEDULING AND MANAGEMENT OF SPECIAL EVENTS AT THE HONOLULU ZOO** for the Department of Enterprise Services, City and County of Honolulu.

The Department of Enterprise Services will conduct a pre-proposal meeting at 10:00 a.m., on JULY 13, 1999, in the Main Offices at the Honolulu Zoo, 151 Kapahulu Avenue, Honolulu, Hawaii.

Forms of proposal and specifications may be obtained from said office of the Division of Purchasing upon application for Proposal No. 13275.

Questions relating to this proposal solicitation may be directed to James Takayesu at telephone no. (808) 523-4877.

**REQUEST FOR PROPOSALS
FOR THE
MANAGEMENT AND OPERATION OF THE FOOD AND GIFT SHOPS
AND THE SCHEDULING AND MANAGEMENT OF SPECIAL EVENTS
AT THE HONOLULU ZOO**

General

A. INTRODUCTION

The City and County of Honolulu is requesting proposals from individuals or entities interested in entering into an agreement with the City for the management and operation of food and gift shops and scheduling and management of special events at the Honolulu Zoo, located in Kapiolani Park, Waikiki, Honolulu.

It is the city's expectation that there will be no cost to the City for the design and construction of renovations, alterations, changes and/or modifications to the food service building, gift shop building, African snack area, and new satellite gift and snack stand(s) proposed by the successful Offeror.

B. GOAL OF THE CITY'S REQUEST FOR PROPOSALS

It is the intent of the City to enter into an agreement under which the successful Offeror would have the right to Manage and operate the food and gift shops and schedule and manage special events held at the Honolulu Zoo. The agreement also requires the successful Offeror, at its own expense, to renovate, alter, change and/or modify the food service building, gift shop building, African snack area, and, if offered, provide and/or construct new satellite gift and snack stand(s) ["satellite locations"], as specified herein.

C. SCOPE OF SERVICES

1. The successful Offeror shall have the right to manage and operate the food and gift shops and to schedule and manage special events at the Honolulu Zoo.
2. The successful Offeror shall assume all responsibilities for the daily operation and maintenance of the immediate surrounding areas of the food and gift shops as depicted in Exhibit "A" attached hereto and incorporated herein, and any satellite locations.
3. The successful Offeror must commit, at its own cost and expense, to capital improvement investments for the design and construction of renovations, alterations, changes, and/or modifications to the Honolulu Zoo's food service building, gift shop building, and African snack area, and if offered, construction and/or provision of new satellite locations. This includes

responsibility for securing all permits, including but not limited to the building permits, bonds, insurance, and clearance for the capital improvements.

4. The Offeror shall include with its proposal, revenue opportunities and revenue sharing arrangements with the City.
5. The Offeror shall include in its proposal, its proposed projected time schedule and milestones for the detailed operation plan and any renovations, alterations, changes, and/or modifications to the food service building, gift shop building, African snack area, and if offered, for construction and/or provision of new satellite locations.
6. Other Proposed Provisions - The Offeror shall describe in its proposal, any other consideration, opportunities or options viewed as enhancing its response to the RFP.

D. OTHER ELEMENTS OF PROPOSAL: FINANCIAL INFORMATION, REFERENCES AND EXPERIENCE

1. The Offeror shall include with its proposal a copy of the company's most recent audited financial statements evidencing the Offeror's financial ability. The Proposal shall include a description of the company, its experience and key personnel.
2. The Offeror must demonstrate its expertise by providing evidence of its experience, qualifications, references, etc., in food and gift shop management and operations, scheduling and management and operation of events held at zoos and other similar facilities.
3. The City desires to enter into an agreement with a single company which has expertise in all areas of food service operation, gift shop operation, and events scheduling and management at zoos or other similar facilities. The City prefers not making an award to an Offeror who is a joint venture or partnership which are formed to meet the requirement of having expertise in food service operation, gift shop operation, and events schedule and management at zoo or other similar facilities.
4. The Offeror shall possess the ability to provide minimum liquid capital equal to the amount of the proposed capital improvement investments to renovate, alter, change and/or modify the food service building, gift shop building, and African snack area, and if offered, construct and/or provide new satellite locations. This requirement can be met by a firm commitment from a financial institution doing business in the State of Hawaii as evidenced by a commitment letter and/or by any other means acceptable to the Director of Budget and Fiscal Services.

E. CONTRACTOR'S RESPONSIBILITIES

The successful Offeror shall have the following responsibilities and expenses related thereto:

1. Design and construct all renovations, alterations, changes, and/or modifications to the food service building, gift shop building, and African snack area proposed by the Offeror, and if offered, construction and/or provision of new satellite locations utilizing a registered professional engineer/architect and licensed contractor. All such work must have the prior written approval of the City.
2. Secure all necessary permits, bonds, insurance and clearances for all renovations, alterations, changes, and/or modifications to the food service building, gift shop building, and African snack area, and if offered, construction and/or provision of new satellite locations.
3. At its own cost and expense, maintain and repair of all equipment, including equipment furnished by the Offeror or the City's equipment installed in the food service building, gift shop building, African snack area, and new satellite locations, if applicable.
4. Payment of all utilities to include, but not limited to, electricity (prorata share if not separately metered), and telephone.
5. Clean and maintain all food and gift shops areas in zoo to include areas affected by food and gift shops operations as depicted on Exhibit "A: attached hereto and incorporated herein, in a clean and sanitary condition in compliance with the requirements of the State Department of Health and to the satisfaction of the City.
6. Arrange for trash control and pest control contract for areas of responsibility.
7. Comply with all Zoo's requests for provision for various customer service options - i.e. stroller rentals, locker rentals, etc,
8. Coordinate with zoo staff for delivery arrangements and use of service roads in zoo.
9. At its own cost and expense, procure the insurance listed below, including any other insurance to cover the operations under this agreement that may be required under laws, ordinances or rules and regulations of any governmental authority, from insurance companies authorized to do business in Hawaii and maintain such insurance throughout the term of the agreement:
 - a. Workers' Compensation and Employers Liability Insurance. This insurance shall cover all of the successful Offeror's employees working in any capacity, whose duties require their presence on the premises. The successful Offeror should procure, at its own expense, necessary fire insurance coverage protecting its own furnishings and trade fixtures.
 - b. Commercial General and Umbrella Liability Insurance. Commercial general liability (CGL)

and if necessary commercial umbrella liability insurance with a limit of not less than \$1,000,000 each occurrence, and general aggregate, and at least \$1,000,000 Products/Completed operations aggregate.

- c. Business Automobile and Umbrella Liability Insurance. Business auto liability (including no-fault coverage) and if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident.
 - d. The insurance specified above shall:
 - (1) Name the City and County of Honolulu as additional insured.
 - (2) Provide that such insurance is primary coverage with respect to all insured and that any insurance or self-insurance carried by the City shall be excess and non-contributing.
 - (3) Not be terminated, canceled, or not renewed without THIRTY (30) DAYS prior written notice to the City, except for non-payment of premium;
 - e. Shall provide, when executing its contract document, and maintain current certificates of insurance prepared by a duly authorized agent, or if requested, copies of the policies, evidencing the insurance in effect at all times during the term of this agreement, to the City.
10. Accept and be responsible for any and all liability or responsibility, in whole or in part, for any damage which may be sustained by any machinery or equipment; or any injury or property loss to any employee, agent, representative, assignee, a guest or customer of the Offeror, regardless of cause.
11. Indemnify, hold harmless and defend the City, its elected and appointed officials, employees, guests, concessionaires and agents, from all suits, actions or claims of any character, including reasonable attorneys' fees and costs of defense, brought on account of any injuries or damages sustained by any person or property on account of the operations of the Offeror, its contractor, subcontractors, or in consequence on any failure to safeguard or secure the work or jobsite or through the use of unacceptable materials in the construction of the capital improvements, or on account of any act or omission by said Offeror or Offeror's agents or subcontractors with respect to the operations of the Offeror on construction of the capital improvements, and also, to hold harmless, indemnify and defend the City, its elected and appointed officials, employees, guests, concessionaires and agents from any losses or damages which should arise due to failure of any utility service or any act causing interruption of Offerors operation outside the control of the City.

12. Neither the contract nor any of the requirements, rights, or privileges demanded by it may be sold, assigned, contracted, or transferred by the successful Offeror without the express written consent of the City, which consent may be withheld within the sole discretion of the City.
13. Obtain all licenses and permits required by law for businesses and, in particular, food sanitation permits. The Offeror shall pay any and all taxes, license fee and permit fees relating to or arising from its operations.
14. Prepare and submit monthly and annual financial reports, detailing gross revenues derived from the operation of the facilities in a form agreed to by the City.
15. Maintain readily available complete and up-to-date financial records, related to its operations and design and construction of the proposed capital improvements, accessible for inspection and audit by the City or its independent auditors. The City shall have the right to, at reasonable, times have access to Offeror's books, accounts, records, and reports including tax reports; and on twenty-four hour's notice, shall have the right to initiate an audit of Offeror's records relating to its operations and the design and construction of the proposed capital improvements.
16. Furnish, install and maintain signs in English and Japanese concerning the nature of its operations, menus, prices, etc. All signs shall comply with all ordinances and laws relating to advertising and signage and shall be approved by the City, prior to installation and use.
17. Agree not to display and sell any item so requested by the City or the use of auxiliary items such as straws, plastic lids, etc. Such City request shall not be made arbitrarily or capriciously.

Offerer's are informed that the Zoo presently has a policy that the public is not allowed to feed the animals. Therefore, no food to feed the animals shall be sold unless approved in writing by the Officer in Charge or an authorized representative of the Officer in Charge.

18. Offeror acknowledges that the City reserves the right to require specific items, specific brands, or specific shelf space be devoted to brands sold at the food and gift shops when an agreement is in place between the City and a vendor giving exclusive rights to serve a particular item, brand, or product at all City facilities.
19. Payment of any all taxes, attributable to Offeror's operations, and all charges incurred or assessed against Offeror's operations.
20. Offeror shall conduct its operations in such a manner as to avoid the (1) the creation, commission or maintenance of a nuisance on the premises; and (2) causation or creation of unusual or objectionable noises or noxious smoke, gases, vapors, or odors.

F. RESPONSIBILITIES OF THE CITY

1. The City shall not permit other vendors to sell or offer to sell any products within the confines of the Honolulu Zoo without the permission of the successful offeror.
2. The City shall be responsible for any major repairs or renovations to the infrastructure of the existing food service building, gift shop building, and African snack area, to include foundation, framework, and roofs.

G. SITE DESCRIPTION

The Honolulu Zoo is located at TMK 3-1-043:001 & 003 which is bordered by Kapahulu Avenue, Paki Avenue, Kalakaua Avenue and Monsarrat Avenue. It is 41.96 acres and is part of the Kapiolani Park and the Diamond Head Special District.

H. TERM OF CONTRACT

The term of the contract shall be for a period of five (5) years. The contract period shall begin on the date designated by the City in its "Notice to Proceed for Management Agreement". The City will reserve the right to terminate the contract without penalty or liability at any time and for any reason, upon reasonable notice to the Offeror. The "Notice to Proceed for Management Agreement" for the contract shall be issued after the design and construction of the improvements to the food service building, gift shop building, and African snack area are completed and the Offeror can fully operate. Satellite locations will not be considered regarding "Notice to Proceed".

I. OPERATIONAL CONTROL

1. Hours of Operation. The main food area(s) and gift shop shall be open for business every day during the hours the Honolulu Zoo is open or except as otherwise authorized by the Director of Enterprise Services.
2. Sale of Items and Price Controls. The prices established for items sold by the Offeror shall be established by the Offeror subject to review and approval by the City through the Director of Enterprise Services.
3. Cash Register Requirements. All sales from the Offeror's operation under this management contract shall be registered in cash registers approved by the Director, Department of Budget and Fiscal Services. The Offeror shall place in front of the cash register in plain view of the customer a sign which says:

"This is a public facility; therefore, the salesperson is required to ring up the sale in the cash register and give you a receipt."

The City shall have the right during business hours to examine the cash register(s) totals and

inspect for conformance with this section. The Offeror shall keep for a period of not less than three (3) years, all pertinent original sales records including cash register tapes, serially numbered sales slips and such other sales records as would normally be examined by an independent accountant pursuant to accepted auditing standards.

4. Maintenance and Repair. The Offeror shall be responsible for the cost of any maintenance and repair work to the food service building, gift shop building, African snack area, and, if offered, satellite locations, including but not limited to the cost of repairs or replacements because of damage to the caused by fire, malicious mischief, vandalism, or unlawful entry. The Offeror may, at its option and sole expense, procure the necessary fire insurance coverage protecting the food service building, gift shop building, African snack area, and, if offered, satellite locations, and the furnishings, equipment and trade fixtures.
5. Inspection by the City. The City shall have the right to enter the food service building, gift shop building, African snack area, and, if offered, satellite locations, at all reasonable times for the purposes of examining the state of repair and condition of the premises and the equipment; and for the purposes of determining whether the terms, covenants and conditions contained in the agreement are being fully and faithfully observed and performed. The Offeror will be provided reports of these inspections and shall comply with any required remedies to correct any discrepancies. Failure to correct any reported discrepancy shall be deemed to constitute a breach of contract and the City shall have the right to terminate the contract.
6. Vending Machine and Pay Telephones. All vending machines and pay telephones shall be approved by the City.

J. SURRENDER OF PREMISES UPON TERMINATION

Upon termination of the contract, other than for the breach thereof, the Offeror shall remove its merchandise, furniture, and equipment and shall peaceably surrender possession of the premises and City's equipment and fixtures in good order, condition and repair, reasonable wear and tear excepted. All permanent equipment and fixtures shall be the property of the City at no cost to the City.

In the event of such termination other than for breach, the Offeror shall have three (3) calendar days immediately following the termination date of the contract to remove its properties and to clean, make repairs and replacements as needed, and ready the premises for inspection by the City by the fourth calendar day following the termination date of the contract. Should the Offeror fail to remove its properties and satisfactorily clean the premises and make repairs and replacements as needed within the prescribed period as determined by the City, then the properties remaining shall vest to the City or be disposed of at the Offeror's expense and further,

the Offeror shall pay for any cleaning, repair, replacement, and storage costs incurred by the City.

K. COSTS OF ENFORCEMENT AND LITIGATION

In the event the City shall become or be made a party to any litigation, other than condemnation or like proceedings, commenced by or against the Offeror arising out of the Offeror's use or occupancy of the premises or attributable to any structures or objects placed thereupon or therein by the Offeror, then the Offeror shall pay all costs and expenses, including attorney fees, incurred by or imposed upon the City in connection with such litigation. Further, in the event of a breach of this contract by the Offeror, the Offeror shall pay all costs and expenses, including attorney fees, incurred by or imposed on the City to enforce this contract or seek remedies for such breach.

L. AMENDMENTS

The contract shall not be varied except by an instrument in writing executed subsequently hereto by both parties.

M. RENOVATE, ALTER, CHANGE AND/OR MODIFY THE PRESENT FOOD SERVICE BUILDING, GIFT SHOP BUILDING, AND AFRICAN SNACK AREA, AND CONSTRUCT AND/OR PROVIDE NEW SATELLITE LOCATIONS

1. Upon execution of the contract, the Officer in Charge or an authorized representative of the Officer in Charge shall give a "Notice to Proceed for Design and Construction" to the Offeror for the design and construction phase to renovate, alter, change and/or modify the present food service building, gift shop building, and African snack area, and if offered, construct and/or provide new satellite locations.
2. The Offeror shall submit final plans, designs and specifications prepared by a registered professional engineer/architect for the construction work specified herein for approval in writing from the Officer in Charge or an authorized representative of the Officer in Charge.
3. The Offeror shall submit a Xerox vellum of as-build plans, final shop drawings and product data sheets to the Officer in Charge or an authorized representative of the Officer in Charge within sixty (60) calendar days after execution of the contract.
4. The Offeror shall also submit final plans and specifications to the Commission on Persons with Disabilities for review to meet the Americans with Disability Act requirements. The documentation showing approval by the Commission shall be submitted to the Officer in Charge or an authorized representative of the Officer in Charge,
5. The Officer in Charge or an authorized representative of the Officer in Charge reserves the right to reject any and all of the final plans, designs and specifications submitted by the Offeror

and to require the Offeror to submit revised plans, designs and specifications within such period or time as said Officer in Charge or an authorized representative of the Officer in Charge may specify.

6. Upon approval in writing of the final plans, design and specifications, the Officer in Charge or an authorized representative of the Officer in Charge shall give written authorization for construction to the Offeror. The Offeror shall secure all permits and commence construction.
7. The Officer in Charge or an authorized representative of the Officer in Charge shall have the final authority to decide any and all questions which may arise relative to the quality or acceptability of materials and equipment furnished and installed on the premises, including the quality of workmanship.

The work must be completed within the time schedule submitted by the Offeror. The Offeror shall submit a monthly schedule of the project. Any delay in the schedule must be approved in writing by the Officer in Charge or an authorized representative of the Officer in Charge. Failure to comply with the schedule may be considered to be a breach of contract.

- N. FOOD AND GIFT SHOP SERVICES DURING DESIGN AND CONSTRUCTION PERIOD. During the design and construction period, the Offeror shall operate food and gift shop services through mobile stands or any other method acceptable to the Officer in Charge or an authorized representative of the Officer in Charge until the construction work on the food service building, gift shop building, and African snack area is completed and accepted by the City, and in full operation. Offerors should submit with their proposals, the amount they will pay the City during the design and construction period.

O. PROPERTY OF THE CITY

The improvements to the food service building, gift shop building, and African snack area, and if offered, permanent new satellite locations shall become the property of the City at no cost to the City.

P. INSURANCE DURING DESIGN AND CONSTRUCTION PERIOD

1. The Offeror shall procure and maintain during the period of construction of improvements to the food service building, gift shop building, and African snack area, and if offered, permanent new satellite locations, at no cost to the City, a Labor and Material Payment and Performance Bond in the amount equal to 100% of the construction cost. The Labor and Material Payment and Performance Bond shall be delivered to the City.
2. The Offeror shall procure and maintain or require its construction contractor to procure and maintain during the period of construction of the improvements to the food service building,

gift shop building, and African snack area, and if offered, permanent new satellite locations, the following types and amount of insurance coverage:

- a. **Builder's Risk Insurance** in an amount equal to the full value of the improvements to the food service building, gift shop building, and African snack area, and if offered, permanent new satellite locations, from a company authorized to do business in the State of Hawaii until final acceptance and approval by the City of the work, covering all work, labor, materials, supplies, fixtures, equipment and machinery against loss by fire, lightning, flood, windstorm, hail, explosion, riot, riot attending strike, civil commotion, aircraft vehicles, smoke and vandalism and malicious mischief.
- b. If applicable, insurance coverage for all insurable value of the insurable work to be done on other than buildings such as site improvements, installation of service line, until final acceptance and approval by the City of the work, against loss by fire, windstorm, lightning, flood, explosion, riot, riot attending strike, civil commotion, aircraft vehicles, smoke and vandalism and malicious mischief.
- c. **Business automobile liability insurance** in an amount not less than \$300,000.00 for bodily injury or death per person, and \$50,000.00 damages to property for each occurrence.
- d. **Commercial general and umbrella liability insurance** with a limit of not less than \$1,000,000.00 each occurrence and general aggregate, and shall cover liability arising from premises, operations, and personal injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the City.
- e. **Workers Compensation and Employers Liability.** The construction contractor shall maintain workers compensation insurance and employers liability insurance. Workers compensation coverage shall be in accordance with State statutes. Employers liability and/or commercial umbrella limits shall not be less than \$1,000,000 per occurrence. In case the construction contractor uses a subcontractor, the construction contractor shall require its subcontractor to maintain such insurance, unless the latter's employees are protected by the construction contractor's insurance.

When a subcontractor is utilized, the construction contractor shall either procure and maintain or require the subcontractor to procure and maintain during the period of the contract, insurance coverage with the same bodily injury and property damage liability limits specified above, covering accidents caused by actions of the subcontractor or its employees.

All of the insurance policy or policies herein prescribed shall be procured and maintained at no cost to the City, and shall have the City named as additional insured (except workers

compensation insurance). Prior to performing any construction work, a copy of such policy, policies or certificates shall be furnished to the Director of Budget and Fiscal Services of the City. Such policy, policies or certificates shall contain an endorsement to the effect that the insuring company will notify the Director of Budget and Fiscal Services at least thirty (30) calendar days prior to the effective date of any cancellation of such policy or policies or any change in their provisions.

Q. EVALUATION AND SELECTION OF PROPOSAL

All proposals received will be evaluated based on the evaluation criteria specified below. The relative importance of each criterion is specified in parenthesis. Each of the sub-factors is of equal importance (weighting).

1. Offeror's qualifications, experience and resources (35%)
 - The City will evaluate the extent, depth, and quality of the Offeror's qualifications and experience in managing and operating both food and gift shops as well as event scheduling and management.
 - Resumes of the Offeror's key staff assigned to manage the operation
 - Employee training programs, customer service programs as well as letters of references.
 - Capability to follow through on any plans for the design and construction of renovations, alterations, changes and/or modifications to the food service building, gift shop building, African snack area, and new satellite gift and snack stand(s) proposed by the successful Offeror.
2. Offeror's plans with milestones (25%)
 - The plan to provide continuous service during construction period.
 - The plan to renovate present facilities as well as construct new facilities.
 - The plan to provide construction timetable for renovations and construction.
 - The plan to provide support for after hours events catering capabilities
 - The plan to have a seven-day/week on site management presence.
 - The plan to schedule major special events at the facility while providing for public use
3. Revenue Sharing Plan (30%)
 - Revenue sharing terms to the City, including Offeror's estimate of potential revenues to the City
 - Incorporate plan for increased profit sharing as gross revenues increases
 - Maximize revenues to the City
 - Adjustment of revenue plan during construction periods.
4. Financial Stability (10%)
 - Must have financial stability and ability to construct and renovate the present facilities
 - Provide evidence of ability to secure financing for construction projects.

R. EVALUATION PANEL/SELECTION AND AWARD

The City has established an Evaluation Panel to assist in the evaluation of proposals received in response to this RFP. The final selection of the Offeror to be awarded the contract, if any award is made, will be made in accordance with the EVALUATION AND SELECTION OF PROPOSAL.

Selection and Award shall be made as follows:

1. A City panel shall review the proposals submitted.
2. All responsive and responsible Offerors who submit acceptable or potentially acceptable proposals are eligible for the priority list.
Discussions, if any, with Offerors will be limited to only priority listed Offerors.
If numerous acceptable and potentially acceptable proposals are submitted, the City may rank the proposals and limit discussions, if any, to at least three Offerors who submit the highest ranked proposals.
Offerors are cautioned that discussions may not be conducted and award may be made on acceptance of the most favorable initial proposal.
3. If deemed appropriate or deemed necessary by the panel, the City shall issue priority-listed Offerors a request for best and final offers.
4. If deemed appropriate, award shall be made to the responsive and responsible Offeror whose offer the Contracting Officer deems most advantageous to the City, considering the evaluation criteria specified herein.

S. TERMS AND CONDITIONS OF AGREEMENT

A form of proposed Agreement is attached hereto as and incorporated herein by reference. The City anticipates the inclusion of the provisions stated in the proposed form of Agreement. The City also acknowledges and discloses that the proposed form of Agreement is not intended as a complete summary of the terms and conditions that the City may require in the final agreement for the project and that provisions may be added or changed during the RFP process.

The Offeror shall be responsible, at its cost, for ensuring compliance with all applicable federal, state and local laws and regulations related to the project. The City reserves the right to require the Offeror to indemnify and defend the City from any and all claims, losses, liabilities and costs relating to such matters and to provide the City with such other assurances of protection from such claims, if any, as the City may reasonably determine appropriate.

The Offeror shall indemnify and defend the City from any and all claims, losses, liabilities and costs arising out of any breach of the Offeror's obligations under the final agreement, any unpermitted use of the City's name or any City logo or mark in connection with the project, or other acts of negligence or willful misconduct by the organization under the program. The Offeror shall not use the City seal or any logo or mark related to the City without the prior written approval by the City.

The City reserves the right to grant or withhold such approval at its sole discretion.

T. OTHER CONTRACTUAL REQUIREMENTS

The foregoing is not intended as a complete summary of the terms and conditions that the City may require in the final agreement for the project.

The City shall have the right to approve all development and implementation plans, and each element thereof, prepared by the Offeror under the planned project.

The agreement shall provide for periodic reporting and for audit and inspection of all records relating to the project by the City or the City's designated representative.

U. OTHER CONDITIONS OF THIS RFP

1. Invitation to Submit Proposals; No Obligation by the City to Contract.

This RFP is only an invitation to submit proposals and does not commit the City in any way to enter into any final agreement or to proceed with the proposed project. In addition, the issuance of this RFP does not obligate the City to pay any costs incurred by any Offeror in connection with this RFP including, but not limited to, (i) the preparation of a response to this request, (ii) any supplements or modification of this RFP or (iii) negotiations with the City or any other party arising out of or relating to this RFP or the subject matter of this RFP.

2. Disclaimer

The City disclaims any revenue, sales, income, cost or other financial estimate, percentage or amount and any patronage estimate or amount whether made in this RFP or any other document or in any discussions, negotiations or communications an officer, employee or agent of the City has had or may have in the future with any Offeror, prospective Offeror or other party, and makes no warranty, guaranty or representation of any kind whatsoever, express or implied, with respect to such estimates, percentages or amounts.

3. Reservation Of Rights By City

The City expressly reserves the right at any time, and from time to time, and for its own convenience, to do any or all of the following:

- a. Waive or correct any immaterial defect or technical error in any response, proposal, or proposed procedure, as part of the RFP or any subsequent negotiation process.
- b. Reject any and all proposals, without indicating any reason for such rejection.
- c. Request that certain or all responders to this RFP supplement or modify all or certain aspects of the information or proposals submitted.

- d. Reissue a Request For Proposals.
 - e. Procure any service by any other means.
 - f. Modify the selection procedure, the scope of services, the proposed program or the required response.
 - g. Extend deadlines for accepting responses, requesting amendments to responses after expiration of deadlines, or negotiating or approving final agreements.
 - h. Negotiate the terms of any final agreement or agreements with any, all or none of the respondents to the RFP, including, but not limited to, modifications in the scope of services.
 - i. Withdraw this RFP or terminate the proposed program prior to entering into final agreements with any successful respondent.
4. Respondent Certification
- By submitting a proposal, the respondent certifies to the City that the respondent has not paid or agreed to pay and will not pay or agree to pay any fee or commission, or any other thing of value contingent on the award of a contract for the project to any City employee or official, or to any contracting consultant hired by the City for purposes of this project.
5. Return of Materials
- Submittals to the City under this RFP shall become the property of the City and County of Honolulu. The City will not return proposals or any information submitted in connection with a proposal unless (i) the respondent has properly designated financial portions of the proposal as confidential at the time of submittal in accordance with the terms above and has clearly requested at the time of submittal that such information be returned and (ii) the City is legally permitted to return such documents.
6. Rights to Disqualify
- The City reserves the right to disqualify any respondent to this RFP on the basis of any real or apparent conflict of interest that is disclosed by the responses submitted or other data available to the City. Any such disqualification shall be at the City's sole discretion.

SPECIAL INSTRUCTIONS TO OFFERORS

A. PROCUREMENT METHOD AND PROCEDURES

This procurement is being conducted as a competitive sealed proposals procurement in accordance with the procedures set forth in Section 103D-303 of the Hawaii Revised Statutes (HRS) and Subchapter 6 of Chapter 122 of Subtitle 11 of Title 3 of the Hawaii Administrative Rules (HAR). The relevant provisions of HRS Chapter 103D and HAR Title 3, Subtitle 11 are incorporated herein by reference and made a part of this RFP. Wherever "chief procurement officer" appears in the HAR, it shall mean the City's Director of Budget and Fiscal Services; wherever "head of the purchasing agency" and "procurement officer" appear in the HAR, both shall mean the Director of the City's Department of Enterprise Services.

General Instructions to Offerors are attached hereto as part of this RFP.

Offerors shall complete and submit the attached FORM A (PROPOSAL FORM) with the submittal of their proposals.

Offerors shall familiarize themselves with the provisions of the HRS and the HAR relevant to this RFP. Copies of the HAR are available for examination at Division of Purchasing, Department of Budget and Fiscal Services, City and County of Honolulu, City Hall, Room 115, 530 South King Street, Honolulu, Hawaii 96813, and are available for purchase at the State of Hawaii, Department of Accounting and General Services.

B. NOTICE OF INTENT TO SUBMIT A PROPOSAL

No notice of intent to submit a proposal shall be required.

C. PRE-PROPOSAL MEETING

Beginning at 10:00 a.m., on JULY 13, 1999, in the Main Offices at the Honolulu Zoo, 151 Kapahulu Avenue, Honolulu, Hawaii, the City will conduct a pre-proposal meeting, to familiarize potential bidders with the scope of services and project site, and to answer questions regarding the requirements of the Request for Proposal. Attendance at this meeting is not mandatory, however, it is strongly recommended that each prospective offeror attend the pre-proposal meeting. Prospective Offerors are reminded that nothing stated at the pre-proposal meeting, either orally or in writing, shall change this RFP in any way or be binding on the City. Any change of this RFP shall be made by written addendum only.

D. ACKNOWLEDGE RECEIPT OF ADDENDUM

Offerors and prospective offerors shall acknowledge receipt of an addendum to this RFP and all prior addenda by signing the Addendum Receipt form included with the addendum and returning it

to the Division of Purchasing at the address specified in Paragraph 1 of the General Instructions to Offerors.

E. PROPOSAL DUE DATE AND TIME

Offerors interested in making a Proposal to the City may do so by submitting their written Proposal to the address specified in Paragraph 1 of the General Instructions to Offerors on or before the Proposal Due Date and Time specified in such paragraph.

F. PROPOSAL SECURITY

No proposal security shall be required.

G. PERFORMANCE BOND

The Offeror shall give as security for the full and faithful performance of the contract by the Offeror, a bond in an amount equal to two (2) month's monthly fee rounded to the next highest hundred dollars. For the purpose of computing the performance bond, the monthly fee shall be the minimum monthly fee bid. The bond shall be made for the term of the contract. It shall be returned to the Offeror after the termination of the contract if the Offeror is not in default. The bond, if other than cash, shall have a surety or sureties thereon as prescribed by HRS Section 102-12. Such surety or sureties shall be subject to the approval of the Director of Budget and Fiscal Services and shall be required to justify as prescribed by said HRS Section 102-12. The bond to be submitted shall be the Performance Bond marked EXHIBIT B attached hereto.

H. CONTENT OF PROPOSAL

At a minimum, Offerors shall submit their written proposals and respond to all points in the order as specified below. This is to facilitate the review and evaluation of all proposals. Failure to comply may result in the city deeming such proposal non-responsive and unacceptable.

To comply, Offerors shall respond to all of the following:

1. Any plan and projected time schedule and milestones for the detailed operation plan and any renovations, alteration, changes, and/or modifications to the food service building, gift shop building, African snack area, and, if offered, construction and/or provision new satellite locations.
2. Plan of proposed revenue opportunities.
3. Plan of revenue sharing arrangements.
4. A copy of the company's most recent audited financial statements evidencing the Offeror's financial stability.
5. Plan to provide minimum liquid capital equal to the amount for the design and construction of

the proposed capital improvement investments to renovate, alter, change and/or modify the present food service building, gift shop building, and African snack area, and if offered, construct and/or provide new satellite locations. This requirement can be met by a firm commitment from a financial institution doing business in the State of Hawaii as evidenced by a commitment letter and/or by any other means acceptable to the Director of Budget and Fiscal Services.

6. Description of the company and key personnel.
7. Evidence of expertise by providing experience, qualifications, references, etc., in food and gift shop operations, and event scheduling and management operations at zoos or other similar facilities.

- I. MANAGED COMPETITION REVIEW. During its term, this Contract shall be subject to a single review by the City pursuant to the managed process for public-private competition to be developed under Part III, Section 6 of Act 230, Session Laws of Hawaii 1998. It is the understanding of the parties that, as a result of the managed process review, this Contract may be terminated by the City, renegotiated by mutual agreement of the parties, or continued in its current form. Any termination pursuant to this Section shall be deemed a termination for convenience

GENERAL INSTRUCTIONS TO OFFERORS

- 1. PREPARATION AND SUBMISSION OF PROPOSALS.** All proposals shall be prepared in accordance with these instructions set forth below and as set forth in this solicitation for proposals.

All proposals shall be submitted to:

Division of Purchasing
Director of Budget and Fiscal Services
City Hall, Room 115
530 S. King Street
Honolulu, Hawaii 96813

Proposals must be received no later than 4 p.m. on AUGUST 3, 1999. Proposals received after this time and date will not be accepted and will be returned to the offerors unopened.

The offeror shall submit an original and five (5) copies of its proposal.

Proposals shall be submitted in an envelope(s) or container(s) to the Purchasing Division at the time and place indicated herein. The proposal number as indicated by the Purchasing Division, offeror's name and address, and opening date of the request for proposals must be printed on the outside of the envelope or container. Offerors must time stamp and deposit their proposals at the designated location in the Division of Purchasing, City Hall, Honolulu, Hawaii. All proposal envelopes or containers must bear the Purchasing Division's time stamp mark. Envelopes or containers which are not time stamped or which are time stamped after the specified proposal opening time and date shall be rejected and shall be returned to the offeror unopened.

The Director, Department of Budget and Fiscal Services shall reserve the right to reject any and/or all proposals not submitted in accordance with the instructions of this proposal solicitation. Proposals which modify, add, or delete any term, consideration, or condition, other than those contemplated by this request for proposals, may be rejected.

Proposals shall be signed in ink by the person or persons duly authorized to sign the proposal to bind the offeror and shall be accompanied by such evidence of the authority of the person or persons to sign on behalf of and bind the offeror, as the Contracting Officer deems satisfactory.

Before submitting a proposal, the offeror shall be responsible for reading and examining the specifications, requirements, terms and conditions, amendments (if any), and any other sections or documents attached hereto, and all applicable federal, State, or City laws, ordinances, resolutions rules, regulations, codes, circulars, guidelines, environmental impact statements, and other standards or requirements. Submission of a proposal shall be deemed verification of such reading and examination. No offeror shall in any way be relieved of any obligation with respect to its

proposal or the contract due to its failure or neglect to secure, receive, examine, familiarize itself with, acquaint itself with, or understand the work requirements, the Request for Proposals or any amendment hereto, applicable standards or requirements, or existing conditions, difficulties, restrictions or obstacles. No claim for additional compensation to the Offeror to the City shall be allowed based on lack of knowledge or misunderstanding.

An offeror shall not submit more than one proposal for this solicitation for proposals. If an offeror submits more than one proposal, all proposals of the offeror shall be rejected; provided that, if an offeror clearly indicates a primary proposal, it shall be considered for award as though it is the only proposal submitted by the offeror. A person shall be considered to have submitted more than one proposal if the person submits more than one proposal under the person's name, or through the person's agents, or through joint ventures, partnerships, or corporations in which the person has more than twenty-five percent (25%) interest in each of them or through any combination thereof.

If there is reasonable grounds to believe that collusion exists among two or more offerors, all of the proposals of the parties to such collusion shall be rejected, and the parties to such collusion shall be prohibited from receiving awards on future contracts with the City.

Proposals shall not be submitted by telephone or by use of facsimile transmission, telex, telegraph, or other written forms of electronic communication. Any such proposals shall be rejected.

All costs to prepare and submit a proposal shall be at the offeror's expense. The City will not reimburse any proposal costs nor any best and final offer costs incurred by any offeror, any prospective offeror, or any other person.

Unless otherwise specified herein, all proposals offered shall be valid for a minimum of one hundred twenty (120) calendar days. The Director may request offerors to extend the time during which the City may accept their offers.

2. **REQUESTS FOR CLARIFICATIONS OR INTERPRETATIONS.** A prospective offeror may submit a request in writing to the Contracting Officer for clarification or interpretation of any aspect of the Request for Proposals.

If it should appear to a prospective offeror that a conflict or inconsistency exists between different parts of the Request for Proposals or that the Request for Proposals is in conflict with any Federal, State or City law, ordinance, rule, regulation, or other standard or requirement, then the prospective offeror shall submit a written request for clarification to the Contracting Officer.

Unless otherwise provided in the Request for Proposals, written requests for clarification or interpretation of the Request for Proposals may be submitted by the use of facsimile transmission, telex, telegraph, or other written forms of electronic communication. No responses will be made to oral inquiries, unless otherwise provided for or permitted as a part of this Request for Proposals.

Only written clarifications or interpretations of the Request for Proposals, issued as amendments to the Request for Proposals, shall be official and binding on the City. All other forms of communication with any officer, employee or agent of the City shall not be binding on the City.

Prospective offerors shall submit in writing or by fax requests for clarification or interpretation regarding the Request for Proposal to:

Charles M. Katsuyoshi, Purchasing Administrator
Purchasing Division, Department of Budget and Fiscal Services
City and County of Honolulu
530 South King Street, Room 115
Honolulu, Hawaii 96813

Facsimile telephone number is (808) 523-4847.

Requests for clarification or interpretation must be submitted in writing or by facsimile machine and must be received by the Purchasing Administrator no later than ten (10) calendar days prior to the proposal opening or due date, unless the Director, Department of Budget and Fiscal Services determines that it is in the best interest of the City to accept any inquiry submitted after the deadline. The City will respond in a timely manner to such requests to all offerors. The City shall not be obligated to respond to requests not received on a timely basis.

Receipt of requests for clarification or interpretation shall be evidenced by the date-time stamp indicated by the time stamp machine or the date-time stamp indicated by the facsimile machine of the City Purchasing Division. The offeror submitting the request shall be responsible for its delivery. The City shall respond in a timely manner. The City shall not be obligated to respond to requests for clarifications or interpretations not received on a timely basis.

Offerors having questions on other than the scope of work or specifications specified herein may direct those questions to Earl Goro of the Purchasing Division at telephone number 523-4795.

3. **SUPPLEMENTAL INSTRUCTIONS OR CHANGES.** Any supplemental instructions or changes will be in the form of written addenda to this solicitation. Any addenda will be mailed, faxed, or made available for pick up by all prospective offerors, prior to the due date for submittal of proposals. It shall be presumed that any addenda so issued have been received by an offeror and such addenda shall become a part of the proposal submittal.

Offerors who have not obtained this proposal solicitation document directly from the City Purchasing Division shall be responsible for immediately notifying the City Purchasing Division to receive all written addenda on a timely basis. Offerors who do not so notify the Purchasing Division and submit proposals without receipt of all addenda issued may be deemed to have submitted proposals not responsive to this request for proposal solicitation.

4. **EXTENSION OF PROPOSAL DUE DATE.** The City may extend the due date to submit a proposal. Any such extension shall be made by a written amendment to this Request for Proposals.
5. **TAXES.** Unless otherwise specified in this solicitation document, the offeror shall include and be responsible for paying all taxes, which shall be applicable to the goods and services or the furnishing or sale thereof.
6. **TAX CLEARANCES REQUIRED.** The successful offeror must obtain up-to-date tax clearances from both the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS) before entering into contract (NOT required at the time you submit your proposal) with the City. The successful offeror must obtain and provide the tax clearances when requested by the Purchasing Division of the City within twenty-one (21) calendar days of the City's request, unless otherwise authorized by the Purchasing Administrator. Failure to obtain the tax clearance within the specified time shall result in rejection of the proposal and the City may award the contract to another offeror.

To obtain the tax clearances, the successful offeror must complete and submit tax clearance form (FORM A-6, available from the Purchasing Division or DOTAX) to DOTAX and the IRS. Instructions to complete the form are on the back side of the form.

DOTAX and the IRS will provide extra certified copies of tax clearances upon your request. Hence, you may want to request extra certified copies if you anticipate entering into several potential contracts.

The tax clearance is required by Act 314 of the State of Hawaii signed into law on July 3, 1996.

Further, you will also be required to provide an up-to-date tax clearance from both DOTAX and the IRS before final payment is made to you under the contract. You may need to get another tax clearance because both DOTAX and IRS have limited the validity of their tax clearances to only 45 calendar days from the later of the DOTAX and the IRS tax clearance dates stamped onto the tax clearance form (FORM A-6).

7. **MODIFICATIONS TO PROPOSAL.** Offerors may modify their proposals prior to the established proposal due date and time by the following documents:
 - a. A written notice received by the Director, Department of Budget and Fiscal Services or the Purchasing Administrator, stating that a modification to the proposal, is submitted; and
 - b. The actual modifications securely sealed in a separate envelope or container, accompanying the written notice.

8. **OPENING OF PROPOSALS.** After the proposal due date, proposals shall not be publicly opened, but shall be opened in the presence of two or more procurement officials. Proposals and modifications shall be shown only to City personnel having legitimate interest in them.

Proposals of the offeror(s) shall be open to public inspection after the contract is signed by all parties.

9. **CONFIDENTIAL INFORMATION OF PROPOSER.** An offeror shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential. Such data shall accompany the proposal and shall be readily separable from the proposal in order to facilitate eventual public inspection of the nonconfidential portion of the proposal.

10. **WITHDRAWALS.** Offerors may withdraw their proposals prior to the proposal due date and time by the following documents:

- a. A written notice received in the office of the Purchasing Division prior to the proposal due date and time:
- b. A written notice faxed to the Purchasing Division prior to the proposal due date and time; or
- c. A telegraphic message received by telephone by the Purchasing Division from the receiving telegraph company office, provided the telegraph company confirms the telephone message by sending a written copy of the telegram showing that the message was received at such office prior to the proposal due date and time.

11. **REQUESTS FOR EXCEPTIONS.** An offeror may request an exception to any requirement of the Request for Proposals. Such request shall be in writing and be fully supported with technical data, test results, or other pertinent information evidencing that if the City grants the requested exception, a condition equal to or better than that required by the Request for Proposals will result, without substantial change to cost or time requirements. The Contracting Officer shall be the sole judge of equality and suitability of an exception and the Contracting Officer's decision shall be final. The prospective offeror requesting the exception shall be responsible for providing all information or samples, at its own expense, that the Contracting Officer deems necessary to consider a request for an exception.

Written requests for exceptions shall be submitted to the Purchasing Administrator no later than ten (10) calendar days prior to the proposal opening or due date, unless the Director, Department of Budget and Fiscal Services determines that it is in the best interest of the City to accept the request submitted after the deadline. Receipt of requests for exceptions shall be evidenced by the date-time stamp of the time stamp machine of the City Purchasing Division or the date-time stamp

indicated by the facsimile machine of the City Purchasing Division. The offeror submitting the request shall be responsible for its delivery. The City shall respond in a timely manner. The City shall not be obligated to respond to requests for exceptions not received on a timely basis.

12. **UNAUTHORIZED COMMUNICATIONS WITH CONTRACTING OFFICER.** Except as otherwise authorized in the Request for Proposals, offerors and their representatives shall not make any contact or communications with the Contracting Officer, any member of a Selection Committee or Evaluation Team appointed by the Contracting Officer, or any other City officer, employee or agent directly serving the procurement activity.
13. **WAIVER OF INFORMALITIES.** The Contracting Officer may waive or accept any minor informalities, irregularities, deviations or other defects, if in the Contracting Officer's judgment such waiver or acceptance will be in the best interest of the City.
14. **AWARD OF CONTRACT, RIGHT TO CANCEL REQUEST FOR PROPOSALS, REJECT PROPOSALS.** Unless otherwise stipulated, the Director will issue a written award of the contract, if an award is made, to the responsive and responsible offeror submitting the proposal deemed most advantageous to the City based on the evaluation and selection criteria specified herein.

The Director reserves the right to cancel this request for proposals, reject any or all proposals or any part thereof, or waive any defects, when in the Director's opinion, such cancellation, rejection or waiver will be in the best interest of the City.

15. **CANCELLATION OF AWARD.** The Director reserves the right to cancel the award of any contract any time before the signing of the same.
16. **STATE OR LOCAL DEBARMENT.** Proposals submitted by offerors who have been debarred from bidding under Section 103D-702 or 103-48, Hawaii Revised Statutes, or any other applicable State or City law, ordinance, rule and regulation, if the debarment is still in effect on the proposal due date, shall be rejected.

Also, proposals submitted by offerors who are under suspension from bidding under any federal law, rule, or regulation, or proposals submitted by any offeror in which a person so suspended has an interest, direct or indirect, may be rejected, if the suspension is still in effect on the date of opening of proposals.

17. **NON-RESPONSIVE OR NON-RESPONSIBLE PROPOSERS.** Proposals submitted by offerors who have been determined to be non-responsive or non-responsible shall be rejected.
18. **CONDITIONAL PROPOSALS.** Proposals which are conditional may be rejected.

19. **ANTI-COMPETITIVE PRACTICES.** If there is any evidence indicating that two or more offerors are in collusion to restrict competition or have otherwise engaged in anti-competitive practices relating to the procurement, the proposals of all such offerors shall be rejected and such evidence may be a cause for the disqualification of the participants in any future procurement.
20. **OMISSIONS.** Proposals which contain any omissions, erasures, alterations or additions not allowed or called for in the Request for Proposals, or irregularities of any kind, may be rejected; provided that errors may be crossed out and correction inserted by printing in ink or by typewriter, if the errors and/or corrections are initialed in ink by the person or persons signing the proposal.
21. **CONTRACT.** The successful offeror must within ten (10) calendar days after notification of the award, or within such further time as the Director may authorize, enter into a contract. The contract shall be based on the proposal offered and the requirements and terms and conditions set forth under this Request for Proposals.
22. **PROTEST PROCEDURES.** Protests shall be made in writing to the Director and shall be filed in duplicate within five working days after the protestor knows or should have known of the facts giving rise therein.

A protest is considered filed when received by the Director. Protests filed after the five-day period shall not be considered.

Protestors may file a protest on any phase of solicitation or award including but not limited to specifications preparation, proposal solicitation, award, or disclosure of information marked confidential in the offer.

To expedite handling of protests, the envelope should be labeled "Protest" and either served personally or sent by registered or certified mail, return receipt requested, to:

Director, Department of Budget and Fiscal Services
City and County of Honolulu
530 S. King Street, 2nd Floor
Honolulu, Hawaii 96813

The written protest shall include as a minimum the following:

- a. The name and address of the protestor;
- b. Appropriate identification of the procurement, and, if a contract has been awarded, its number;
- c. A statement of reasons for the protest; and
- d. Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time in which case the expected availability date shall be indicated.

The notice of protest shall be deemed communicated and filed within forty-eight hours from the time of mailing, if mailed, or communicated and filed when received personally by the Director, Department of Budget and Fiscal Services.

When a protest has been filed within five working days and before an award has been made, no award of the contract shall be made until the protest has been settled unless the Director makes a written determination after consulting with the head of the using agency that the award of the contract without delay is necessary to protect substantial interests of the City.

A decision on a protest shall be made by the Director, Department of Budget and Fiscal Services as expeditiously as possible after receiving all relevant, requested information.

Reconsideration of a decision of the Director may be requested by the protestor, appellant, any interested party who submitted comments during consideration of the protest, or any agency involved in the protest. The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered. Requests for reconsideration of a decision of the Director shall be filed not later than ten working days after receipt of such decision. A request for reconsideration shall be acted upon as expeditiously as possible.

23. **SPECIAL PROVISIONS, REQUIREMENTS OR SPECIFICATIONS.** Whenever separate proposals, special provisions, requirements, specifications or plans are referred to or attached hereto, they shall be considered a part of the contract as if contained therein. Should any of the proposals, special provisions, requirements, specifications or plans conflict with these instructions to offerors, said proposals, special provisions, requirements, specifications or plans shall govern.

Should any of the special provisions, these instructions, requirements, specifications, general terms and conditions conflict with any applicable statutory provisions of Chapter 103, 103D Hawaii Revised Statutes, as amended, HAR, City Charter, or City Ordinances, the statutory provisions or rules shall govern.

**GENERAL TERMS AND CONDITIONS
FOR COMPETITIVE SEALED PROPOSALS
FOR GOODS AND SERVICES
FOR THE CITY AND COUNTY OF HONOLULU**

1. DEFINITIONS. Whenever used herein:

- a. "CITY" means the City and County of Honolulu.
- b. "CHANGE ORDER" means a written order signed by the Contracting Officer of the City directing the Contractor to make changes to the contract.
- c. "CHIEF PROCUREMENT OFFICER" means the Director, Department of Budget and Fiscal Services of the City.
- d. "CONTRACT" means the written agreement covering the performance of the services or providing any goods required herein. It shall include these general terms and conditions and any special provisions attached hereto. It shall also include all modifications of the contract by supplemental agreements thereto in writing and written orders of the Director and Officer-in-Charge.
- e. "CONTRACT MODIFICATION" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
- f. "CONTRACTING OFFICER" means the Director, Department of Budget and Fiscal Services of the City.
- g. "CONTRACTOR" means the person, as defined in Section 103-41, Hawaii Revised Statutes, duly entering into the contract with the City in connection with these General Terms and Conditions.
- h. "DAYS" means calendar days unless otherwise specified.
- i. "DIRECTOR" means the Director, Department of Budget and Fiscal Services of the City, who has been duly authorized to act as the Contracting Officer of the City.
- j. "HAR" refers to Hawaii Administrative Rules of the Procurement Policy Board of the State of Hawaii. Copies of the HAR are available for examination at the Purchasing Division and are available for purchase at the State of Hawaii, Department of Accounting and General Services.
- k. "OFFEROR" or "PROPOSER" means a vendor who responds to the request for proposals.
- l. "OFFICER IN CHARGE" means the Director, Department of Enterprise Services, of the City.
- m. "PURCHASING DIVISION" means the Division of Purchasing, Department of Budget and Fiscal Services of the City.
- n. "SOLICITATION" means a request for proposals ("RFP") used in the competitive sealed proposal process for the purpose of obtaining proposals to perform a City contract.

- o. **"STATE"** means State of Hawaii, unless otherwise specified.
 - p. **"WORK"** means the furnishing by the Contractor of all labor, services, materials, equipment, and other incidentals necessary for the satisfactory performance of the contract.
2. **GENERAL TERMS AND CONDITIONS INTENDED TO COVER.** These General terms and Conditions are intended to cover furnishing and paying for goods and services called for, including delivery to the places designated.
 3. **SPECIAL PROVISIONS, REQUIREMENTS OR SPECIFICATIONS.** Whenever separate proposals, special provisions, requirements, specifications or plans are referred to or attached hereto, they shall be considered a part of the contract as if contained herein. Should any of the proposals, special provisions, requirements, specifications or plans conflict with these General Terms and Conditions, said proposals, special provisions, requirements, specifications or plans shall govern.
 4. **CONSTRUCTION OF CONTRACT.** The masculine shall be deemed to embrace and include the feminine and the singular shall be deemed to embrace and include the plural, whenever required in the context of the contract.
 5. **INTERPRETATION OF BID PROPOSAL, SPECIAL PROVISIONS, REQUIREMENTS, PLANS, SPECIFICATIONS, AND GENERAL TERMS AND CONDITIONS.** In case of any doubt as to the meaning of any proposal, special provisions, requirements specifications, plans, and general terms and conditions, the interpretation by the Director shall control. All directions and explanations required or necessary to complete the contract shall be formulated by the Director or an authorized representative.
 6. **EXECUTION OF CONTRACT.** This contract shall not be considered binding upon the City until the contract has been fully and properly executed by all the parties thereto.
 7. **CONTRACT ADMINISTRATION.** It is expressly understood and agreed that the Contractor is an independent contractor, with the authority to control and direct the performance and details of the work and services herein contemplated; however, the City retains the general right of inspection by a designated representative in order to judge, whether in the City's opinion, such work is being performed by the Contractor in accordance with the terms of this agreement.
 8. **COMPLIANCE WITH CONTRACT TERMS, ETC.** The work shall be completed in conformity with the specifications and each and every requirement of the general terms and conditions and other provisions forming a part of the contract. In the event the Contractor fails to so perform, the chief procurement officer, in addition to any other recourse, reserves the right to suspend the Contractor from bidding on any or all contracts of the City, State of Hawaii, or other counties of the State, pursuant to Chapter 3-126, HAR.
 9. **CHANGE ORDERS AND MODIFICATIONS.** The Contractor will not undertake to perform any portion of the contract work affected by changes until authorized by the Director or an authorized representative in writing or until a change order or modification has been approved and issued.
 10. **STANDARD ITEM.** Whenever the word "standard" is used in these specifications to describe any item, piece of equipment, or parts assembly, it shall be construed to mean that the items or assemblies so described shall be the newest, regular, and current product of the manufacturer thereof. Such product shall be identified by a model or other designation without modification or

omission of any of its usual parts, or the substitution of others, except as hereinafter specified, and the details, capacities and ratings must conform in every respect to the said manufacturer's catalog or other printed matter describing the items or assemblies. Standard sub-assemblies, accessories fittings and finishes shall be construed to be those which are regularly furnished as a part of the principal unit or assembly and shall be included in the selling price thereof.

11. **QUALITY OF GOODS.** Unless otherwise specified, any goods required by the bid or proposal solicitation or contract shall be new and the best quality of its kind, and shall be goods of recognized manufacturers, unless otherwise specified in the Special Provisions, System Requirements or other section of the contract.
12. **INSURANCE REQUIREMENTS.** Whenever insurance coverages are required of the Contractor under this contract, the Contractor shall keep in force the insurance policy(s) for the duration of the contract period, unless otherwise specified. Failure to comply shall be regarded as material default under this contract, entitling the City to exercise any or all of the remedies provided in this contract for a default of the Contractor.
13. **INDEMNITY.** The Contractor shall indemnify, hold harmless and defend the City and its officers, employees, agents, and representatives from all suits, actions, claims, damages, and judgements of any character that may be brought against the City by whomsoever, on account of any injuries or damages sustained by any person and property, due to the negligent acts or omissions by the Contractor, or any of his officers, employees, subcontractors, assignees, or representatives, in the performance of the contract. In the event the City and the Contractor are found to be joint tortfeasor with respect to any such injuries or damages, the Contractor's obligations to indemnify the City under this section shall extend only to the Contractor's pro rata share of negligence as determined in accordance with section 663-12, Hawaii Revised Statutes as amended.
14. **PATENTED ARTICLE.** The Contractor shall hold the City and all its officers, agents, servants and employees harmless against all claims arising from the use of any patented article, patented process, or patented appliance used in connection with the contract. Any royalties due or becoming due for the use of any patented article or process shall be paid by the Contractor and considered to be originally included within the proposal and contract price.
15. **CHANGE ORDERS.**
 - a. **Change order.** By written order, at any time, and without notice to any surety, the Director may, unilaterally, order of the Contractor: 1) Changes in the work within the general scope of the contract; and 2) Changes in the time of performance of the contract that do not alter the scope of the contract work.
 - b. **Adjustments of price or performance time.** If any change order increases or decreases the Contractor's cost of, or the time required for, performance of any part of the work under this contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this section shall be determined, where applicable, in accordance with the Price Adjustment clause of the General Terms and Conditions or as negotiated. Failure of the parties to agree to an adjustment shall not excuse the Contractor from proceeding with the contract as changed, provided that the Director or an authorized City representative promptly and duly makes the provisional adjustments in payment or time for the direct costs of the work as the City deems reasonable. The right of the Contractor to dispute the contract price or time or both shall not be waived by its performing the work, provided however, that it follows the written notice requirements for disputes and claims established by the contract or these terms.

- c. Time period for claim. Within ten days after receipt of a written change order unless the period is extended by the Director or an authorized City representative in writing, the Contractor shall respond with a claim for an adjustment. The requirement for a timely written response shall not be waived and shall be a condition precedent to the assertion of a claim.
- d. Claim barred after final payment. No claim by the Contractor for an adjustment hereunder shall be allowed if written response is not given prior to final payment under this contract.
- e. Claims not barred. In the absence of a change order, nothing in this clause shall be deemed to restrict the Contractor's right to pursue a claim under the contract or for breach of contract.

16. MODIFICATIONS TO CONTRACT.

- a. Contract modification. By a written order, at any time, and without notice to any surety, the Director or an authorized representative, subject to mutual agreement of the parties to the contract and subject to all appropriate adjustments, may make modifications within the general scope of this contract to include any one or more of the following:
 - 1) Drawings, designs, or specifications, for the goods to be furnished;
 - 2) Method of shipment or packing;
 - 3) Place of delivery;
 - 4) Description of services to be performed;
 - 5) Time of performance (i.e., hours of the day, days of the week, etc.);
 - 6) Place of performance of the services; or
 - 7) Other provisions of the contract accomplished by mutual action of the parties to the contract.
- b. Adjustments of price or time for performance. If any modification increases or decreases the Contractor's cost of, or the time required for, performance of any part of the work under this contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this contract or as negotiated.
- c. Claim barred after final payment. No claim by the Contractor for an adjustment hereunder shall be allowed if written agreement of modification is not made prior to final payment under this contract.
- d. Claims not barred. In the absence of a contract modification, nothing in this clause shall be deemed to restrict the Contractor's right to pursue a claim under the contract or for a breach of contract.

17. PROMPT PAYMENT BY CONTRACTORS TO SUBCONTRACTORS.

- a. Prompt payment. Any money, other than retainage, paid to a Contractor shall be dispersed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
- b. Upon final payment to the Contractor, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

18. STOP WORK ORDERS.

- a. **Order to stop work.** The Director, may, by written order to the Contractor, at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding sixty days after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this paragraph. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Director shall either: (1) Cancel the stop work order; or (2) Terminate the work covered by such order as provided in the "termination for default clause" or the "termination for convenience clause" of this contract.
- b. **Cancellation or expiration of the order.** If a stop work order issued under this section is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if: (1) The stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and (2) The Contractor asserts a claim for such an adjustment within thirty days after the end of the period of work stoppage; provided that, if the Director decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.
- c. **Termination of stopped work.** If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowable by adjustment or otherwise.
- d. **Adjustment of price.** Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause of this contract.

19. PRICE ADJUSTMENT. Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways:

a. Price adjustment

- 1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- 2) By unit prices specified in the contract or subsequently agreed upon;
- 3) By the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;
- 4) In such other manner as the parties may mutually agree; or
- 5) In the absence of agreement between the parties, by a unilateral determination by the Director of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the Director in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, Hawaii Administrative Rules (HAR).

- b. Submission of cost or pricing data. The Contractor shall provide cost or pricing data for any price adjustments subject to the provisions of subchapter 15, chapter 3-122, HAR.

- 20. **PAYMENTS.** Payments will be authorized by the Director after completion of performance or delivery and acceptance by the Director of all materials, goods, and services stipulated in the contract or Purchase Order and after the invoices, in triplicate, are received by the ordering agency, Attention: Fiscal Officer. The invoices must list the following information: contract and confirmation purchase order numbers (if any), item numbers, description of items, quantities, vendor code, unit prices and extended totals. Payments will be computed in accordance with any applicable unit prices bid.

Payments will be made as soon thereafter as the regular course of business will allow; provided, however, that payments shall be made no later than thirty (30) calendar days following receipt of the statement for goods received and services completed.

Unless otherwise specified, partial payment(s) for any item or portion of any item under the contract may be permitted. Said partial payment(s) may be authorized by the Officer in Charge or an authorized representative, provided that delivery and acceptance of the item is made before the contract delivery date and upon submittal of proper invoices and substantiating documents by the Contractor. Said authorization by the Officer in Charge or an authorized representative shall be by endorsement on the submitted invoice; no other action will be required to effect the partial payment(s).

Also, in accordance with section 103-53, HRS, final payment under any contract of \$10,000 or more shall not be made, in any event, without a certificate from the State Director of Taxation certifying that all taxes levied or accrued under State Statutes against the Contractor with respect to this contract have been paid.

- 21. **SUBLETTING.** The Contractor shall not sublet any of the work to be performed without written permission from the Director. The subcontracting shall not, under any circumstances, relieve the Contractor of the Contractor's obligation and liability under the contract with the City. All persons engaged in performing the work covered by the contract shall be considered as agents of the Contractor, and shall be subject to the provisions thereof.
- 22. **ASSIGNMENT OF MONEY DUE OR PAYABLE.** No assignment of money due or to become due to a Contractor on any City contract shall be made without prior written consent of the Director. Such consent shall be given and such an assignment shall be accepted only if the assignment meets the following requirements:
 - a. The assignment must be money due or to become due on a formal contract. A formal contract is a contract in writing which has been approved as to form and legality by the Corporation Counsel, and certified as to availability of funds by the Director, Department of Budget and Fiscal Services. A formal contract does not include a Purchase Order or letter contract.
 - b. The assignment must be the entire amount due or to become due on the contract and the amount due or to become due must be not less than one thousand dollars (\$1,000).
- 23. **CONTRACT NOT BINDING UNLESS FUNDS AVAILABLE.** No contract awarded shall be binding or of any force and effect unless the Director has, in accordance with section 103D-309, HRS, endorsed thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; with the exception of a multi-term contract, whereby, the Director shall only be required to certify

that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract; provided further that this section shall not apply to any contract in which the total amount payable to the Contractor cannot be accurately estimated at the time the contract is to be awarded.

In any contract involving not only City funds but supplemental funds from the federal government, this section shall be applicable only to that portion of the contract price as is payable out of City funds. As to the portion of the contract price as is expressed in the contract to be payable out of federal funds, the contract shall be construed to be an agreement to pay the portion to the Contractor, only out of federal funds to be received from the federal government. This paragraph shall be liberally construed so as not to hinder or impede the City in contracting for any project involving financial aid from the federal government.

24. NOVATION OR CHANGE OF NAME.

- a. No assignment of contract. No City contract is transferable, or otherwise assignable, without the written consent of the Director provided, that a Contractor may assign monies receivable under a contract after due notice to the City, subject to the assignment of money due or payable clause specified under this contract.
- b. Recognition of a successor in interest; assignment. When in the best interest of the City, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that: the transferee assumes all of the transferor's obligations; the transferor remains liable for all obligations under the contract but waives all rights under the contract as against the City; and unless the transferor guarantees performance of the contract by the transferee, the transferee shall furnish all required bonds.
- c. Change of name. When a contractor requests to change the name in which it holds a contract with the City, the Director shall, upon receipt of a document indicating such change of name (for example an amendment to the articles of incorporation of the corporation), enter into an agreement with the requesting contractor to effect such a change of name. The agreement changing the name shall specifically indicate that no other terms and conditions of the contract are thereby changed.
- d. Reports. All change of name or novation agreements effected hereunder shall be reported to the Director within thirty days of the date that the agreement becomes effective.
- e. Actions affecting more than one purchasing agency. Notwithstanding the provisions of paragraphs (a) through (c), when a contractor holds contracts with more than one purchasing agency of the City, the novation or change of name agreements herein authorized shall be processed only through the office of the Director.

25. CLAIMS BASED ON CITY'S ACTIONS OR OMISSIONS.

- a. Notice of Claim. If any action or omission on the part of the Director or designee of such officer, requiring performance changes within the scope of the contract constitutes the basis for a claim by the Contractor for additional compensation, damages, or an extension of time for completion, the Contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- 1) The Contractor shall have given written notice to the Director or designee of such officer: (a) Prior to the commencement of the work involved, if at that time the Contractor knows of the occurrence of such action or omission; or (b) Within thirty days after the Contractor knows of such action or omission if the Contractor did not have such knowledge prior to the commencement of the work; or (c) Within such further time as may be allowed by the Director in writing.
 - 2) This notice shall state that the Contractor regards the act or omission as a reason which may entitle the Contractor to additional compensation, damages, or an extension of time. The Director or designee of such officer, upon receipt of such notice may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Director or designee of such officer;
 - 3) The notice required by subparagraph (1) describes as clearly as practicable at the time the reasons why the Contractor believes that additional compensation, damages, or an extension of time may be remedies to which the Contractor is entitled; and
 - 4) The Contractor maintains and, upon request, makes available to the Director within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.
- b. **Limitation of clause.** Nothing herein contained, however, shall excuse the Contractor from compliance with any rules of law precluding any City officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.
- c. **Adjustments of price.** Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the price adjustment clause of the contract.

26. TERMINATION FOR DEFAULT.

- a. **Default.** If the Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Director may notify the Contractor in writing of the delay or non-performance, and if not cured in ten days or any longer time specified in writing by the Director, such officer may terminate the Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Director may procure similar goods or services in a manner and upon terms deemed appropriate by the Director. The Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. **Contractor's duties.** Notwithstanding termination of the contract and subject to any directions from the Director, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the City has an interest.
- c. **Compensation.** Payment for completed goods delivered and accepted by the City shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Director; if the parties fail to agree, the Director shall set an amount subject to the Contractor's rights under chapter 3-126, HAR. The City

may withhold from amounts due the Contractor such sums as the Director deems to be necessary to protect the City against loss because of outstanding liens or claims of former lien holders and to reimburse the City for the excess costs incurred in procuring similar goods and services.

- d. Excuse for nonperformance or delayed performance. Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms, including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance, if the Contractor has notified the Director within fifteen days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State of Hawaii and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the goods or services to be furnished by the subcontractor were unreasonably obtainable from other sources in sufficient time to permit the Contractor to meet the contract requirements.

Upon request of the Contractor, the Director shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the City under the clause entitled in fixed-price contracts, "Termination for Convenience" and in cost-reimbursement contract, "Termination". As used in this paragraph of this clause, the term "subcontractor" means subcontractor at any tier.

- e. Erroneous termination for default. If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of the clause, or that the delay was excusable under the provisions of paragraph (d), Excuse for nonperformance or delayed performance of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the City, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the City, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the Contractor's rights under chapter 3-126, HAR.
- f. Additional rights and remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

27. TERMINATION FOR CONVENIENCE

- a. Termination for convenience. When the interests of the City so require, the Director may terminate this contract in whole or in part, for the convenience of the City. The Director shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.
- b. Contractor's obligations. The Contractor shall incur no further obligations in connection with the terminated work and on the dates set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding

orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work subject to the City's approval. The Director may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the City. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

- c. Right to goods. The Director may require the Contractor to transfer title and deliver to the City in the manner and to the extent directed by the Director: any completed goods; and the partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights, hereinafter called "manufacturing material," as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

The Contractor shall, upon direction of the Director, protect and preserve property in the possession of the Contractor in which the City has an interest. If the Director does not exercise this right, the Contractor shall use the Contractor's best efforts to sell such goods and manufacturing materials. Use of this section in no way implies that the City has breached the contract by exercise of the termination for convenience clause.

- d. Compensation:

- 1) The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by subchapter 15, chapter 3-122, HAR, bearing on such claim. If the Contractor fails to file a termination claim within one year from the effective date of termination, the Director may pay the Contractor, if at all, an amount set in accordance with subparagraph 3) below.
- 2) The Director and the Contractor may agree to settlement provided the Contractor has filed a termination claim supported by cost or pricing data to the extent required by subchapter 15, chapter 3-122, HAR, and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the City, the proceeds of any sales of goods and manufacturing materials under paragraph c. of this clause, and the contract price of the work not terminated.
- 3) Absent complete agreement under subparagraph 2) the Director shall pay the Contractor the following amounts, provided payments agreed to under subparagraph 2) shall not duplicate payments under this subparagraph for the following:
 - a) Contract prices for goods or services accepted under the contract;
 - b) Costs incurred in preparing to perform and performing the terminated portion of the work plus a five percent markup on actual direct costs on such portion of the work, such markup shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - c) Subject to the prior approval of the procurement office, the costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to paragraph b. of this clause. Subcontractors shall be entitled to a markup of no more than ten percent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance

- d) with subparagraph 3)b).
The total sum to be paid the Contractor under this subparagraph shall not exceed the total contract price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 2), and the contract price of work not terminated.

- 4) Cost claimed, agreed to, or established under subparagraph 2) and 3) shall be in accordance with chapter 3-123, HAR.

28. DISPUTES.

- a. All controversies between the City and the Contractor which arise under, or are by virtue of, this contract and which are not resolved by mutual agreement, shall be decided by the Director, in writing, within one hundred twenty calendar days after a written request by the Contractor for a final decision concerning the controversy; provided that if the Director does not issue a written decision, within one hundred twenty calendar days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Contractor may proceed as if an adverse decision had been received.
- b. The Director shall immediately furnish a copy of the decision to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
- c. Any such decision shall be final and conclusive, unless fraudulent, or the Contractor brings an action seeking judicial review of the decision in the circuit court of the State of Hawaii within the six months from the date of receipt of the decision.
- d. The Contractor shall comply with any decision of the Director and proceed diligently with performance of this contract pending final resolution by the circuit court of the State of Hawaii of any controversy arising under, or by virtue of, this contract, except where there has been a material breach of contract by the City; provided that in any event the Contractor shall proceed diligently with the performance of the contract where the Director has made a written determination that continuation of work under the contract is essential to the public health and safety.

29. STATUTORY OR ORDINANCE REQUIREMENTS. The applicable provisions of Chapter 103, 103D Hawaii Revised Statutes, as amended, Title 3, Department of Accounting and General Services of the State of Hawaii Administrative Rules ("HAR"), and the City Charter and the City Ordinances shall be deemed to be a part of the contract as though fully set forth therein.

The Contractor shall at all times observe, perform, and comply with all federal, state and local laws or ordinances, rules and regulations which in any manner affect those engaged or employed in the performance of the work, the manufacture and sale of materials and equipment required under the contract, and the conduct of the work. The Contractor shall also comply with all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto. If any discrepancy or inconsistency is discovered in the contract for the work in relation to any such laws, ordinances, rules and regulations, orders or decrees, the Contractor shall forthwith report the same to the Officer in Charge in writing.

30. REMEDIES. Any dispute arising under or out of this contract is subject to chapter 3-126, HAR.

31. **INTEREST.** Interest on amounts ultimately determined to be due to a Contractor or the City shall be payable at the statutory rate applicable to judgments against the City under chapter 662, HRS, from the date the claim arose through the date of decision or judgment, whichever is later.
32. **SEXUAL HARASSMENT POLICY FOR EMPLOYER HAVING A CONTRACT WITH THE CITY**
All City contractors must comply with City Ordinance 93-84 on sexual harassment. All contractors shall have and enforce a policy prohibiting sexual harassment. The Contractor's sexual harassment policy must set forth the same or greater protection than those contained or required by the ordinance. The ordinance is applicable to the employer's business and includes the following:
- a. Prohibitions against an officer's or employee's sexual harassment of the following:
 - 1) Another officer or employee of the employer;
 - 2) An individual under consideration for employment with the employer; or
 - 3) An individual doing business with the employer;
 - b. A provision prohibiting a management or supervisory officer or employee from knowingly permitting a subordinate officer or employee to engage in the sexual harassment prohibited under subdivision a;
 - c. A prohibition against retaliation towards an officer, employee, or individual who has complained of sexual harassment, conducted an investigation of a complaint, or acted as a witness during an investigation of a complaint;
 - d. A prohibition against a malicious false complaint of sexual harassment by an officer, employee, or individual;
 - e. Provisions allowing an officer, employee, or individual to make a sexual harassment complaint to an appropriate management, supervisory, or personnel officer or employee;
 - f. Procedures for investigating a sexual harassment complaint in an unbiased, fair, and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment;
 - g. A provision requiring the use of the "reasonable person of the same gender standard," to determine if sexual harassment has occurred. Under the standard, sexual harassment shall be deemed to have occurred if the alleged offender's conduct would be considered sexual harassment from the perspective of a reasonable person of the same gender as the alleged victim. If the alleged victim is a woman, the "reasonable person of the same gender standard" shall be equivalent to and may be called the "reasonable woman standard;"
 - h. Disciplinary actions which may be imposed on an officer or employee who committed a prohibited act; and
 - i. For an employer with at least five employees, a provision requiring the annual viewing of a video on the sexual harassment policy by each management or supervisory officer or employee.

The policy required under this section shall be in effect for at least the duration of the employer's contract with the City.

The action of the bidder or proposer in submitting its bid, proposal or signing of the contract shall constitute its pledge and acceptance of the provisions for the sexual harassment policy as

required by City Ordinance 93-84.

City Ordinance 93-84 is on file and available for viewing in the Purchasing Division. Bidders or contractors needing a copy must pick up the copy from the Office of the City Clerk, Room 203, City Hall, 530 S. King Street, Honolulu, Hawaii.

**REQUEST FOR PROPOSALS
TO PROVIDE
FOR THE MANAGEMENT AND OPERATION OF THE FOOD AND GIFT
AND THE SCHEDULING AND MANAGEMENT OF SPECIAL EVENTS
AT THE HONOLULU ZOO
FOR THE CITY AND COUNTY OF HONOLULU**

FORM A

PROPOSAL FORM

Director, Department of Budget and Fiscal Services
Purchasing Division, Room 115
530 South King Street
Honolulu, Hawaii 96813

This Proposal is submitted in response to the City's Request for Proposals to provide for the management and operation of the food and gift shops and the scheduling and management of special events at the Honolulu Zoo and to operate the same for public use for a period of five (5) years. The undersigned declares and certifies that the Offeror (1) has fully, carefully, and thoroughly examined, has fully familiarized itself with, and has fully satisfied itself with respect to any questions that could in any way affect the Offeror's understanding of the Request for Proposals, including the scope of work, and the Offeror's duties, responsibilities, obligations and liabilities thereunder, and (2) understands and accepts the terms, conditions, provisions and requirements of the Request for Proposals and any amendments thereto, and all applicable Federal, State, or City laws, statutes, ordinance, resolutions, rules, regulations, codes, and other standards and requirements, and that the Offeror hereby proposes to perform the services as required therein and in compliance therewith as specifically defined in the following documents which comprise the submitted Proposal.

1. Request for Proposal and Addenda (if any)
2. Completed response to CONTENT OF PROPOSAL (as specified in Section G of the SPECIAL INSTRUCTIONS TO OFFERORS herein)

Respectfully submitted,

Name of Offeror

Authorized Signature

Print or Type Name and Title of Above

Business address:

Business telephone number: _____

Business fax number: _____

Name/Address/Telephone Number/Fax Number of contact person:

State of Hawaii General Excise Tax License Number: _____

Federal Employer Identification Number: _____

Offeror is a:

☐ Sole Proprietorship
☐ Corporation
☐ Partnership

If Offeror is a partnership, provide the names and address of all members of the partnership

State of Incorporation: Hawaii ☐

Other ☐
(Please specify)

NOTE: If "Other", is corporate seal available in your Honolulu Office?

☐ Yes ☐ No

PERFORMANCE BOND

**FOR THE MANAGEMENT AND OPERATION OF FOOD AND GIFT SHOPS
AND THE SCHEDULING AND MANAGEMENT OF SPECIAL EVENTS
AT THE HONOLULU ZOO
HONOLULU, HAWAII**

KNOW ALL MEN BY THESE PRESENTS: That the undersigned,

_____ as principal, and

_____ as surety,

hereby acknowledge and recognize ourselves held and firmly bound to the City and County of Honolulu,
its successors and assigns, as obligee in the sum of

_____ (\$_____) lawful money of the
United States of America, for the payment of which sum well and truly to be made we bind ourselves,
our heirs, legal representatives, successors and assigns, as the case may be, jointly and severally, firmly
by these presents.

The condition of this obligation is that whereas the principal has entered into Contract with the
obligee for the management and operation of the food and gift shops and the scheduling and
Management of special events at the Honolulu Zoo, Honolulu, Hawaii, for the **FIVE (5) YEAR** period
commencing on the official commencement date designated on the "NOTICE TO PROCEED" and said
Contract provides for the payment of fees by the principal to the obligee, and the compliance by the
principal with the terms, provisions, conditions, covenants and agreements as therein provided, a
duplicate copy of said Contract is on file in the office of said obligee.

NOW, THEREFORE, if the principal:

1. Shall well and faithfully observe, fulfill, and perform each and every term, condition, or
obligation contained in said Contract and any amendment thereto and on the part of the principal to be
observed, fulfilled, and performed (it being understood that the surety hereby waives notice of any kind
and all amendments to said Contract); and

2. Shall pay, as they shall become due, all just claims of the obligee under said Contract and for enforcing the terms of said Contract if action is brought thereon (including reasonable attorneys' fees in any case where such action is successfully maintained), and for compliance with the laws appertaining thereto;

THEN THIS OBLIGATION SHALL BE VOID, but otherwise it shall remain in full force and effect.

The term of this bond shall be for **FIVE (5) YEARS** commencing

_____ and subject to annual renewal at the option of the Surety.

HOWEVER, this bond shall be automatically renewed for an additional period of **ONE (1) YEAR** from the present or each future expiration date unless the Surety has notified the Obligee in writing not less than **THIRTY (30) DAYS** before such expiration date that the Surety elects not to renew this bond.

IN WITNESS WHEREOF, the parties hereto have executed these presents this _____ day of _____, 19____.

Contractor

By _____
Authorized Signature

Title _____

Surety

By _____
Authorized Signature

Title _____

(Notarial Acknowledgments)

PROPOSED MANAGEMENT AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 1999 by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, hereinafter called the "CITY", and _____ a _____ corporation, whose principal place of business and mailing address is _____, hereinafter called the "Contractor".

WITNESSETH:

WHEREAS, the City desires to enter into a Management Agreement for the Management and Operation of the Food and Gift Shops and the Scheduling and Management of Special Events at the Honolulu Zoo; and

WHEREAS, the City issued a Request for Proposals (RFP) on _____ to obtain a Contractor to Manage and Operate the Food and Gift Shops and to Schedule and Manage Special Events at the Honolulu Zoo; and

WHEREAS, on _____, the Contractor submitted a proposal and best and final offer in response to the RFP; and

WHEREAS, the City has selected the proposal submitted by the Contractor for award pursuant to the RFP;

NOW, THEREFORE, in consideration of the above and the mutual promises and the terms, conditions, and provisions contained herein, the City and the Contractor agree as follows:

1. **INCORPORATION BY REFERENCE: PRECEDENCE:** The proposal and best and final offer submitted by the Contractor on _____ are attached hereto as Exhibit A and incorporated herein and made a part hereof.

The RFP, as amended, is attached hereto as Exhibit B and incorporated herein and made a part hereof.

In the event of any conflict between the provisions of Exhibits A, B, and this Agreement, this Agreement shall govern over Exhibits A and B. In the event of any conflict between Exhibits A and B, Exhibit B shall govern over Exhibit A.

2. **PRICE:** The Contractor agrees to pay the City at the price(s) specified in Section _____

_____ of the proposal (Exhibit A) submitted by the Contractor on _____
_____. The fee(s) include all taxes applicable to the goods and services offered
and chargeable to or payable by the City, any of its agencies or the Contractor.

4. **TERM**: This Agreement shall remain in full force and effect beginning upon execution of this contract and ending sixty (60) months after the date designated by the City in its "Notice to Proceed" after the design and construction phase is completed, unless earlier terminated in accordance with the provisions set forth in Exhibit B.
5. **INDEPENDENT CONTRACTOR**: The parties agree that the Contractor is not an employee of the City for any purpose whatsoever. The Contractor is an independent contractor at all times during the performance of this agreement.
6. **COMPLETE AGREEMENT**: This agreement embodies the entire contract between the parties and shall not be altered except in writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY AND COUNTY OF HONOLULU

By: _____
Director of Budget and Fiscal Services

(Name of Contractor)

By: _____
Authorized Representative

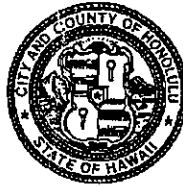
Title: _____

DEPARTMENT OF BUDGET & FISCAL SERVICES
CITY AND COUNTY OF HONOLULU

530 S. KING STREET, #208 HONOLULU, HAWAII 96813
PHONE: (808) 523-4616 / FAX: (808) 523-4771

PURCHASING DIV
BUDGET & FINANCE SVCS
C&C OF HONOLULU

JEREMY HARRIS
MAYOR



CAROLL TAKAHASHI
ACTING DIRECTOR

BENJAMIN Y.L. DIMOND
DEPUTY DIRECTOR

'01 FEB 16 P1:51

January 12, 2001

Service Systems Associates, Inc.
2001 Steele Street
Denver, CO 80208-5737

Attention: Mr. T. Kevin McNicholas
President

SUBJECT: Amendment No. 1 to Contract No. 13275 -
Management Agreement for the Management and Operation
of the Food and Gift Shops and the Scheduling and
Management of Special Events at the Honolulu Zoo

The City and County of Honolulu desires to amend the contract as specified hereinbelow. The Contractor shall obtain the services of a consultant to develop an estimate for the electrical infrastructure upgrade needed to operate the additional equipment the Contractor will be installing in the Food Shop at the Honolulu Zoo. To cover the consultant's fee of \$3,500.00, the City will credit the Contractor's monthly payment(s) to the City over a term to be applied later.

This amendment to the contract is in accordance with Section 16, Modifications to Contract, of the General Terms and Conditions of the contract.

All other terms and conditions of the Contract shall remain unchanged and in full force and effect.

Please indicate your acceptance of this amendment by signing in the space provided below, and return the original of this letter as soon as possible.

Service Systems Associates, Inc.
January 12, 2001
Page 2

Should you have any questions, please call James Takayasu of the City Purchasing Division at (808) 523-4877.

Yours truly,

Carroll Takahashi

CAROLL TAKAHASHI
Acting Director of Budget
and Fiscal Services

ACCEPTED:
SERVICE SYSTEMS ASSOCIATES, INC.

By

Its:

President

Date:

2-18-01

APPROVED AS TO FORM AND LEGALITY:

[Signature]
Deputy Corporation Counsel

2-20-01
cc: DFE
Fiscal
Jas.
Actg

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU

DIVISION OF PURCHASING
530 S. KING STREET • ROOM 115 • HONOLULU • HAWAII 96813
PHONE (808) 523-4867 • FAX: (808) 523-4847

JEREMY HARRIS
MAYOR



CAROLL TAKAHASHI
DIRECTOR
CHARLES M. KATSUYOSHI
PURCHASING ADMINISTRATOR

October 1, 2001

TO: Barry Fukunaga, Director, Department of Enterprise Services
FROM: Charles M. Katsuyoshi, Purchasing Administrator
SUBJECT: Management and Operation of the Food and Gift Shops and the Scheduling and Management of Special Events at the Honolulu Zoo

Attached is a fully executed copy of Amendment No. 2 to Contract No. 13275, for the Management and Operation of the Food and Gift Shops and the Scheduling and Management of Special Events at the Honolulu Zoo for the Department of Enterprise Services, City and County of Honolulu, Honolulu, Hawaii awarded to SERVICES SYSTEMS ASSOCIATES, INC..

A copy of the contract has been forwarded to your fiscal office.

A handwritten signature in cursive script, reading "Charles M. Katsuyoshi", is written over a horizontal line.

CHARLES M. KATSUYOSHI
Purchasing Administrator

CMK:eu

Attach.

cc: Fiscal

4395
10/2/01 CP



October 1, 2001

Service Systems Associates, Inc.
The Pavilion at City Park
2001 Steele Street
Denver, Colorado 80205-5737

Gentlemen:

Attached is a fully executed copy of Amendment No. 2 to Contract No. B275, for the Management and Operation of the Food and Gift Shops and the Scheduling and Management of Special Events at the Honolulu Zoo for the Department of Enterprise Services, City and County of Honolulu, Honolulu, Hawaii.

Very truly yours,


CHARLES M. KATSUYOSHI
Purchasing Administrator


CMK:eu

Attach.

cc: Department of Enterprise Services

AMENDMENT NO. 2
CONTRACT NO. 13275
MANAGEMENT AGREEMENT
FOR THE MANAGEMENT AND OPERATION
OF THE FOOD AND GIFT SHOPS AND THE
SCHEDULING AND MANAGEMENT OF SPECIAL EVENTS
AT THE HONOLULU ZOO

THIS AGREEMENT is made and entered into this 28th day of September, 2001 by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, hereinafter called the "City", and SERVICE SYSTEMS ASSOCIATES, INC., an Iowa corporation, whose principal place of business and mailing address is The Pavilion at City Park, 2001 Steele Street, Denver, Colorado, 80205-5737, hereinafter called the "Contractor".

WITNESSETH:

WHEREAS, the City is under an existing contract with the Contractor for the Management and Operation of the Food and Gift Shops and the Scheduling and Management of Special Events at the Honolulu Zoo for the Department of Enterprise Services, City and County of Honolulu; and

WHEREAS, said contract is identified as Contract No. 13275, dated January 24, 2000; and

WHEREAS, the Contractor is required under the contract to make major improvements to the gift shop building and the food service building; and

WHEREAS, the Contractor, during the planning and design phase of the contract discovered that: 1) the existing electrical power supply for the gift shop building and the food service building is inadequate to support the major improvements required of the Contractor; and 2) major structural repairs will be required to the Gift Shop Building due to termite damage; and

WHEREAS, the City has determined that it is responsible for 1) providing additional electrical power supply up to the boundaries of the buildings; and 2) structural repairs due to termite damage, pursuant to Section F, RESPONSIBILITIES OF THE CITY, of the Contract; and

WHEREAS, the Contract permits modifications to the Contract where the modifications are within the general scope of the Contract; and

WHEREAS, the City desires that the Contract be modified within the general scope of the Contract as noted above; and

NOW THEREFORE, the City and the Contractor hereby agree as follows:

1. Since the City is not currently funded to pay for: 1) the estimated cost of \$84,000.00 for the electrical upgrades to support the improvements to the gift shop building the food service building and 2) the estimated cost of \$75,000 to \$90,000 to repair the termite damage to the gift shop building, the Contractor shall pay for the full amount of the actual costs of the electrical upgrades and the costs for repairing the termite damage.
2. In exchange for the payment for the full amount of the actual costs of 1) the electrical upgrades and 2) the repair of the termite damage, the management Agreement will be extended for an additional thirty-six (36) months. The Contract commission rent rate to be paid to the City for the thirty-six month extended period shall be the same as for Contract years 3-7, as specified under the original Contract.
3. All other terms and provisions shall remain in effect and in full force.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY AND COUNTY OF HONOLULU

By: Carol Takahashi
Director of Budget and Fiscal Services

SERVICE SYSTEMS ASSOCIATES, INC.

By: T. K. Smith
Authorized Representative

Title: PRESIDENT

APPROVED AS TO FORM AND LEGALITY

Chris Mull
Deputy Corporation Counsel

(corporation)

STATE OF ~~HAWAII~~
IOWA

CITY AND COUNTY OF ~~HONOLULU~~

} ss.

On this 14th day of SEPTEMBER, 2001, before me appeared

T. KEVIN Mc Nicholas and _____

to me personally known, who, being by me duly sworn, did say that they are the _____

PRESIDENT and _____

respectively, of SERVICE SYSTEMS ASSOCIATES, INC.

and that the seal affixed to the foregoing instrument is the corporation seal of said corporation;

and that said instrument was signed and sealed in behalf of said corporation by authority of its

Board of Directors, and the said PRESIDENT and _____

_____ acknowledged said instrument to be the free act
and deed of said corporation.

[Signature]
Notary Public, State of ~~Hawaii~~

Colorado

My Commission Expires 4-3-2005

(partnership)

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

} ss.

On this _____ day of _____, _____, before me personally
appeared _____, one of the partners of _____

_____, to me known to be the person described in and
who executed the foregoing instrument and acknowledged that _____ he executed the same as the
free act and deed of said partnership.

Notary Public, State of Hawaii

My Commission Expires _____

Contract as noted above; and

NOW THEREFORE, the City and the Contractor hereby agree as follows:

1. Since the City is not currently funded to pay the estimated cost of \$25,546.71 for the electrical upgrades needed to allow the Contractor to operate a kiosk at the new orangutan exhibit, and the structural repairs required to the Gift Shop portion of the main entrance building roof, the Contractor shall pay for the full amount of the actual costs of such electrical upgrades and structural repairs.
2. In exchange for the payment for the full amount of the actual costs of 1)the electrical upgrades needed to allow the Contractor to operate a kiosk at the new orangutan exhibit, and 2)the structural repairs required to the Gift Shop portion of the main entrance building roof, the management Agreement will be extended for an additional nineteen (19) months. The Contract commission rent rate to be paid to the City for the nineteen-month extended period shall be the same as for Contract years 3-7, as specified under the original Contract.
3. All other terms and provisions shall remain in effect and in full force.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY AND COUNTY OF HONOLULU


By: M. M. Peterson
Director of Budget and Fiscal Services

SERVICE SYSTEMS ASSOCIATES, INC.

By: _____
Authorized Representative

Title: _____

APPROVAL RECOMMENDED:


Director of Enterprise Services

APPROVED AS TO FORM AND LEGALITY

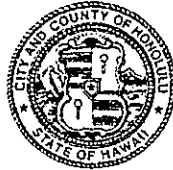

Deputy Corporation Counsel

DEPARTMENT OF ENTERPRISE SERVICES
CITY AND COUNTY OF HONOLULU

777 WARD AVENUE • HONOLULU, HAWAII 96814-2166
TELEPHONE: (808) 527-5400 • FAX: (808) 527-5433 • INTERNET: www.blaisdelcenter.com

GOLF COURSE DIVISION • HONOLULU ZOO • NEAL S. BLAISDELL CENTER AND WAIKIKI SHELL

MUFU HANNEMANN
MAYOR



005 OCT 24 A 10:11

SIDNEY A. QUINTAL
DIRECTOR

GAIL Y. HARAGUCHI
DEPUTY DIRECTOR

October 14, 2005

REC'D - FOWU-RE 1

05 OCT 24 P2:55

RECEIVED
BUDGET & FISCAL SVCS
C&C OF HONOLULU

MEMORANDUM

TO: MARY PATRICIA WATERHOUS, DIRECTOR
DEPARTMENT OF BUDGET AND FISCAL SERVICES

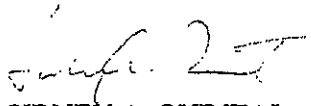
FROM: SIDNEY A. QUINTAL, DIRECTOR

SUBJECT: EXTENSION OF SERVICE SYSTEMS ASSOCIATES MANAGEMENT
AGREEMENT - HONOLULU ZOO


Service Systems Associates (SSA) letter dated details the cost of infrastructure upgrades to the electrical system to ensure service to the new orangutan exhibit and also repairs made to the roof of the main entrance building.

We recommend approval of the nineteen months extension.

Please have your staff contact Ronald Nakano, Concessions Officer, at 527-5409 if you have any further questions.


SIDNEY A. QUINTAL
Director

APPROVED:


MARY PATRICIA WATERHOUSE
Director of Budget and Fiscal Services

AMENDMENT NO. 3
TO CONTRACT NO. 13275
MANAGEMENT AGREEMENT
FOR THE MANAGEMENT AND OPERATION
OF THE FOOD AND GIFT SHOPS AND THE
SCHEDULING AND MANAGEMENT OF SPECIAL EVENTS
AT THE HONOLULU ZOO

THIS AGREEMENT is made and entered into this 13th day of December, 2005 by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, hereinafter called the "City", and SERVICE SYSTEMS ASSOCIATES, INC., an Iowa corporation, whose principal place of business and mailing address is The Pavilion at City Park, 2001 Steele Street, Denver, Colorado, 80205-5737, hereinafter called the "Contractor".

W I T N E S S E I H:

WHEREAS, the City is under an existing contract with the Contractor for the Management and Operation of the Food and Gift Shops and the Scheduling and Management of Special Events at the Honolulu Zoo for the Department of Enterprise Services, City and County of Honolulu; and

WHEREAS, said contract is identified as Contract No. 13275, dated January 24, 2000; and

WHEREAS, the City has determined that 1)upgrades to the electrical system are needed to allow the Contractor to operate a kiosk at the new orangutan exhibit; and 2)structural repairs are required to the Gift Shop portion of the main entrance building roof; and

WHEREAS, the City has determined that it is responsible for providing the upgrades to the electrical system for the kiosk it requested the Contractor provide at the new orangutan exhibit; and

WHEREAS, the City has also determined that it is responsible for structural repairs required to the Gift Shop portion of the main entrance building roof, pursuant to Section F, RESPONSIBILITIES OF THE CITY, of the Contract; and

WHEREAS, the Contract permits modifications to the Contract where the modifications are within the general scope of the Contract; and

WHEREAS, the City desires that the Contract be modified within the general scope of the

Contract as noted above; and

NOW THEREFORE, the City and the Contractor hereby agree as follows:

1. Since the City is not currently funded to pay the estimated cost of \$25,546.71 for the electrical upgrades needed to allow the Contractor to operate a kiosk at the new orangutan exhibit, and the structural repairs required to the Gift Shop portion of the main entrance building roof, the Contractor shall pay for the full amount of the actual costs of such electrical upgrades and structural repairs.
2. In exchange for the payment for the full amount of the actual costs of 1)the electrical upgrades needed to allow the Contractor to operate a kiosk at the new orangutan exhibit, and 2)the structural repairs required to the Gift Shop portion of the main entrance building roof, the management Agreement will be extended for an additional nineteen (19) months. The Contract commission rent rate to be paid to the City for the nineteen-month extended period shall be the same as for Contract years 3-7, as specified under the original Contract.
3. All other terms and provisions shall remain in effect and in full force.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY AND COUNTY OF HONOLULU


By: _____
Director of Budget and Fiscal Services

SERVICE SYSTEMS ASSOCIATES, INC.

By: _____
Authorized Representative

Title: _____

APPROVAL RECOMMENDED:



Director of Enterprise Services

APPROVED AS TO FORM AND LEGALITY

Deputy Corporation Counsel

AMENDMENT NO. 4
TO CONTRACT NO. 13275
MANAGEMENT AGREEMENT
FOR THE MANAGEMENT AND OPERATION
OF THE FOOD AND GIFT SHOPS AND THE
SCHEDULING AND MANAGEMENT OF SPECIAL EVENTS
AT THE HONOLULU ZOO

THIS AMENDMENT NO. 4, made this 10th day of October, 2010

("Amendment No. 4"), is entered into by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, whose principal place of business and mailing address is Honolulu Hale, 530 South King Street, Room 115, Honolulu, Hawaii 96813, hereinafter called the "CITY," and SERVICE SYSTEMS ASSOCIATES, INC., an Iowa corporation, whose principal place of business and mailing address is 4699 Marion Street, Denver, Colorado 80216-2118, hereinafter called the "CONTRACTOR."

WITNESSETH THAT:

WHEREAS, the CITY and the CONTRACTOR entered into a Management Agreement identified as Contract No. 13275 dated January 24, 2000, amended by Amendment No. 1 dated January 12, 2001, Amendment No. 2 dated September 28, 2001, and Amendment No. 3 dated December 13, 2005, hereinafter collectively referred to as the "Agreement," for the Management and Operation of the Food and Gift Shops and the Scheduling and Management of Special Events at the Honolulu Zoo for the Department of Enterprise Services, City and County of Honolulu;

WHEREAS, Subsection 3 of Section C, Scope of Services, of the original Contract No. 13275 requires the Contractor to make "capital improvement investments for the design and construction of renovations, alterations, changes, and/or modifications" to the Zoo gift shop building;

WHEREAS, the CONTRACTOR is willing to make an investment in capital improvements in the estimated amount of One Hundred Eighty-One Thousand Eight Hundred Four and 81/100 Dollars (\$181,804.81) for fixed improvements, including construction improvements, alterations, furnishings, and equipment (hereinafter referred to as the "Total Capital Input") as necessary for the gift shop at

the Honolulu Zoo as further detailed in Appendix A to this Amendment No. 4, provided the Total Capital Input is amortized over a period of five (5) years, commencing October 1, 2010;

WHEREAS, the Notice of and Request for Exemption No. 329 provides for the extension of contract to September 30, 2015 to allow amortization of the Total Capital Input over a period of five (5) years, commencing on October 1, 2010;

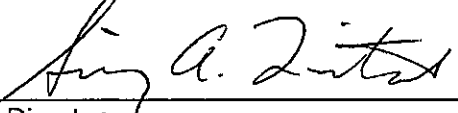
NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the CITY and the CONTRACTOR hereby agree to amend the Agreement as follows:

1. The CONTRACTOR will make an investment of Total Capital Input in the estimated amount of One Hundred Eighty-One Thousand Eight Hundred Four and 81/100 Dollars (\$181,804.81) for fixed improvements, including construction improvements, alterations, furnishings and equipment as further detailed in Appendix A attached hereto. In the event the cost of the fixed improvements detailed in Appendix A exceeds the estimated amount stated herein, this shall not be a basis for further extension of the Contract. The new increased amount shall then be the Total Capital Input. The term as extended by this Amendment No. 4 shall not increase with the increase in the Total Capital Input.
2. The Total Capital Input shall be amortized over a period of five (5) years, commencing on October 1, 2010.
3. The term of the contract is extended to September 30, 2015.


In the event of any conflict or inconsistency between the provisions of this Amendment No. 4 and any provisions of the Agreement, the provisions of this Amendment No. 4 shall govern in all aspects. All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 4 to the Agreement, effective as of the date first written above.

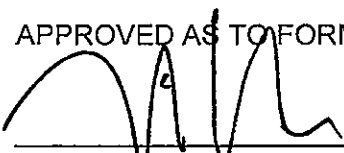
APPROVED AS TO CONTENT:


By: Its Director
Department of Enterprise Services

CITY AND COUNTY OF HONOLULU


By: Director ~~ACTING~~
Budget and Fiscal Services *by whi*

APPROVED AS TO FORM AND LEGALITY:


Deputy Corporation Counsel

SERVICE SYSTEMS ASSOCIATES, INC.


By: Its President & CEO

Colorado
Place of Incorporation, if applicable

(303) 322-3031
Business Telephone Number

STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF Colorado)
) S.S.
COUNTY OF Denver)

On this 3rd day of October, 2010, before me appeared
T. Kevin McNicholas, and _____, to me
known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are
President & CEO and _____ of
Service Systems Associates, Inc. the
CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said
instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said instrument as
the free act and deed of the CONTRACTOR.


(Signature)

Kevin J. Eldredge
(Print name)

(Notary Stamp or Seal)

Notary Public, State of Colorado

My Commission Expires: 4/5/2013

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: _____

Undated at time
Doc. Date: _____ of notarization No. of Pages: _____ Jurisdiction: _____

Signature of Notary _____ Date of Certificate _____

(Notary Stamp or Seal)

Printed Name of Notary _____

Appendix A

IMPROVEMENTS REQUIRED TO BE MADE BY THE CONTRACTOR

The CONTRACTOR shall, at its own expense, furnish and install all improvements stated herein and listed below , including the point of sale furnishings, signage and music system for the new Honolulu Zoo Entrance Gift Shop. In addition, the CONTRACTOR shall furnish and install a new camera security system as specified in the quotation from Integrated Security Technologies Inc. and as approved by the Acting Zoo Director. The CONTRACTOR shall also provide to the City and County of Honolulu a fiber optic communication upgrade that extends from the Waikiki Fire Station to various operating units within the Honolulu Zoo in accordance with the quotation from Security Integrated Technologies Inc. and as approved by the Acting Zoo Director. This upgrade includes all labor and equipment to install junction boxes at each designated terminus as directed by the Acting Zoo Director.

The CONTRACTOR's improvement design, plans and improvement shall be in compliance with all applicable laws, ordinance, rules and regulations, and must meet the State's building codes. Such proposed design and plans, including the quality of materials and quantity of each itemized improvement shall be provided to the Officer-in-Charge for prior approval. Proposed language for signage shall be provided to the Officer-in-Charge for prior approval. All improvements listed herein shall be completed no later than October 1, 2011.

The CONTRACTOR shall be responsible for all necessary permits and submittals as required by the City and County of Honolulu's Departments of Planning and Permitting and Design and Construction. A copy of the most current plans and building permit shall be kept on site and be readily accessible for reference.

During the period of implementation of improvements or any period of construction, remodeling or installation, the CONTRACTOR shall procure and maintain Builder's and Installation Risk insurance coverage covering loss or damage to materials, supplies and equipment to be built, installed or otherwise incorporated into the premises. The CONTRACTOR shall also provide an acceptable Certificate of Insurance to the Director of the Department of Enterprise Services naming the City and County of Honolulu as an additional insured and require a similar certificate from all sub contractors that may be contracted for the work described above.

City inspectors shall be allowed access to the concession premises and review of the plans and building permit.

The improvements listed herein shall be considered permanent fixture and the property of the City. The CONTRACTOR will NOT be given any concession fee credit during the concession term for the cost of the improvements listed herein.

Estimated SSA Expenses for Honolulu Zoo Gift Shop

Pan Am Fixture Package - Est. Cost \$54,575.00

19 ea. Wall Cases made of Europly Material, Crown Molding, Natural Maple Slat wall Back Panels with Mill Aluminum Inserts, Lumicor Inserts, (4) Europly Shelves- 46-1/4" W X 13-3/4"D with (12) 14" Brackets 48"W x 16"D x 96"H

2 ea. 3-Tier Impulse Bin made of Europly Material, Lumicor Decorative Inserts at Top, (24) Acrylic Bins- 7-1/4" x 7-1/4" x 23" x 23" x 54"H

4 ea. Set of (3) Nesting Tables made of Europly Material. (1) Large Rectangular Table- 48"L x 24"D x 30"H. (2) Medium, Radiused Front Tables- 40"L x 24"D x 25"H.

8 ea. Pinwheel / Quad Unit made of Europly, Natural Maple Slat wall with Mill Aluminum Inserts, (16) 24"W x 12"D Shelves, (32) 12"D Brackets, Locking Casters

8 ea. Europly Custom T-Stands for Hanging Apparel. Lumicore Inserts at Top. 24" Square Base, 60"H with (2) Fixed Straight Outs

(2) 45"W x 14"D Shelves

(6) 30"W x 14"D Shelves

(38) 14"L Chrome Brackets

(2) 23"L Hang Rods

(2) 30"L Hang Rods

(2) 16"L Waterfalls

Fixture Accessories - Est. Cost \$20,000.00

Store Decorations include Cabinet & Fixture Accessories as well as Shipping of Fixture Purchase.

4 ea. NW250M- Europly H-Fixture on Casters. 54"L x 36"D x 54"H. (10) 23"W x 14"D Shelves.

Fixture Installation - Est. Cost \$5,500.00

Installation to be done by Licensed Contractor – Okada Trucking

Security Cameras - Est. Cost \$18,738.38

1 ea. Lenel Network Video Recorder Software with 1U PC Chassis (DVC-1U) – Includes a low profile Chassis (DVC-1U) PC with one 80GB Operating System drive; full use of the OnGuard Intelligent Video suite for forensic investigations and three (3) 1TB SATA data drives.

5 ea. Lenel Network Video Recorder Software – Includes a single channel software license for on IP/Network based camera channel to be used with either a customer provided PC or adding on to a turnkey system. The customer provided PC must meet or exceed the Minimum DVC-EX PC Configuration requirements listed above (maximum of 63 IP/Network channels per recorder based on video resolution; framerate; quality and processing options being utilized).

1 ea. OnGuard Video Security Server Software License on CD – include this part number if you already have purchased a security server pc- includes OnGuard digital video server software license; system administration for video; communication server for video; alarm monitoring for video; a single OnGuard digital video client license and first year support plan SUSP-W-DV.

1 ea. APC Smart-UPS 1500

5 ea. Alliance VGA Exterior Day/Night Vandal Dome Camera, Day/Night Varifocal Lens

1 ea. 19" Monitor

40 Labor performed: Equipment Installation

Counter Beverage Display - Est. Cost \$6,500.00

FDA approved refrigerated display case for F&B sales

Outdoor Furniture - Est. Cost \$3,700.00

Seating for Honolulu Zoo guests to use, will be located directly in front of Gift Shop

Exterior Signage - Est. Cost \$6,500.00

Gift Shop Sign

Stereo System - Est. Cost \$400.00

Sound System for Gift Shop

Fiber Optic Cabling - Est. Cost \$65,891.43

Fiber optic installation that runs from Paki Avenue to the new front entrance for the benefit of the zoo, this will terminate at the junction box for future installation by others. This includes:

Placing City and County provided fiber from the pedestal at the corner of Paki Avenue and Kapahulu Avenue to Waikiki Fire Station. 20' slack coil will be left at the pedestal location.

Trenching 2" conduit from hand hole to hand hole. Trench will be 24" in depth and will be backfilled with the native materials. Trench will be leveled off and seed will be spread out on the trench line.

AMENDMENT NO. 5
TO CONTRACT NO. 13275
MANAGEMENT AGREEMENT
FOR THE MANAGEMENT AND OPERATION
OF THE FOOD AND GIFT SHOPS AND THE
SCHEDULING AND MANAGEMENT OF SPECIAL EVENTS
AT THE HONOLULU ZOO

THIS AMENDMENT NO. 5, made this 12th day of June, 2014 ("Amendment No. 5"), is entered into by and between the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, whose principal place of business and mailing address is Honolulu Hale, 530 South King Street, Room 115, Honolulu, Hawaii 96813, hereinafter called the "CITY," and SERVICE SYSTEMS ASSOCIATES, INC., an Iowa corporation, whose principal place of business and mailing address is 4699 Marion Street, Denver, Colorado 80216-2118, hereinafter called the "CONTRACTOR."

WITNESSETH THAT:

WHEREAS, the CITY and the CONTRACTOR entered into a Management Agreement identified as Contract No. 13275 dated January 24, 2000, as amended by Amendment No. 1 dated January 12, 2001, as amended by Amendment No. 2 dated September 28, 2001, as amended by Amendment No. 3 dated December 13, 2005, as amended by Amendment No. 4 dated October 13, 2010, hereinafter collectively referred to as the "Agreement," for the Management and Operation of the Food and Gift Shops and the Scheduling and Management of Special Events at the Honolulu Zoo for the Department of Enterprise Services, City and County of Honolulu;

WHEREAS, the contract terms in Amendment No. 4 were stated incorrectly and shall be revised in accordance with the Notice to Proceed dated February 3, 2003; and

WHEREAS, Section 16, Modifications to Contract of the General Terms and Conditions authorizes the CITY at any time to make modifications to the Agreement;

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the CITY and the CONTRACTOR hereby agree to amend the Agreement as follows:

1. Amendment No. 4, Page 2, Paragraphs 1, 2, and Item No. 2, delete any reference to October 1, 2010 as the commencement date and replace with "October 1, 2012".
2. Amendment No. 4, Page 2, Paragraph 2 and Item No. 3, delete any reference to September 15, 2015 and replace with "September 30, 2017."
3. In accordance with Section 4, Term of the Contract, of the Request for Proposals and the Notice to Proceed, dated February 3, 2003, the official term of the Contract was established as March 1, 2003 for a period of five (5) years. The following dates and amendments demonstrate the term of the contract:

<u>Description</u>	<u>Extension Period</u>	<u>End Date</u>
Original Contract Term:	5 years	February 29, 2008
Amendment No. 2:	36 months	February 28, 2011
Amendment No. 3:	19 months	September 30, 2012
Amendment No. 4:	5 years	September 30, 2017

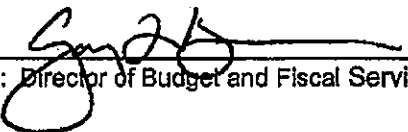
In the event of any conflict or inconsistency between the provisions of this Amendment No. 5 and any provisions of the Agreement, the provisions of this Amendment No. 5 shall govern in all aspects. All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment
No. 5 to the Agreement, effective as of the date first written above.


APPROVED AS TO CONTENT:


By: Director of Enterprise Services

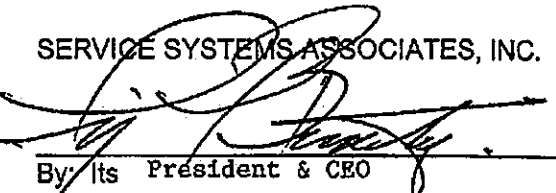
CITY AND COUNTY OF HONOLULU

FOR 
By: Director of Budget and Fiscal Services

APPROVED AS TO FORM AND LEGALITY:


City & County of Honolulu
Deputy Corporation Counsel
KENDRA K. KAWAI

SERVICE SYSTEMS ASSOCIATES, INC.


By: Its President & CEO

Timothy L. Brantley
Printed Name

President & CEO
Title

Colorado
Place of Incorporation, if applicable

(303) 322-3031
Business Telephone Number

STATE OF HAWAII

CONTRACTOR'S ACKNOWLEDGMENT

STATE OF Colorado)
) S.S.
COUNTY OF Denver)

On this 21st day of May, 2014, before me appeared
Timothy L. Brantley, and _____, to me
known, to be the person(s) described in and, who, being by me duly sworn, did say that he/she/they is/are
President & CEO and _____ of
Service Systems Associates, Inc. the
CONTRACTOR named in the foregoing instrument, and that he/she/they is/are authorized to sign said
instrument on behalf of the CONTRACTOR, and acknowledges that he/she/they executed said instrument as
the free act and deed of the CONTRACTOR.

Kevin J Eldredge
Notary Public
State of Colorado
Notary ID 19934004574
My Commission Expires April 3, 2017

(Notary Stamp or Seal)

[Signature]
(signature)

Kevin J. Eldredge

(Print name)

Notary Public, State of Colorado

My Commission Expires: 4/3/2017

NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Identification or Description: _____

Undated at time
Doc. Date: of notarization No. of Pages: _____ Jurisdiction: _____

Signature of Notary

Date of Certificate

(Notary Stamp or Seal)

Printed Name of Notary

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813
PHONE: (808) 768-3900 • FAX: (808) 768-3179 • INTERNET: www.honolulu.gov

PETER B. CARLSLE
MAYOR



MICHAEL R. HANSEN
DIRECTOR

NELSON H. KOYANAGI, JR.
DEPUTY DIRECTOR

September 23, 2011

Mr. Jason Ito
Honolulu Zoological Society
151 Kapahulu Avenue
Honolulu, Hawaii 96815

Dear Mr. Ito:

Subject: Honolulu Zoological Society Cooperative Agreement

Attached is a fully executed copy of the Honolulu Zoological Society cooperative agreement.

Questions or problems relating to this letter should be directed to Jodi Faria at 768-3965.

Sincerely,

A handwritten signature in black ink, appearing to read "Wendy K. Imamura".

WENDY K. IMAMURA
Purchasing Administrator

WKL:jf

Attachment

AG 12-7144
COOPERATIVE AGREEMENT
BY AND BETWEEN
CITY AND COUNTY OF HONOLULU
AND
HONOLULU ZOOLOGICAL SOCIETY

THIS COOPERATIVE AGREEMENT (this "Cooperative Agreement" or "Agreement") is made this 28th day of September, 2011 (the "Effective Date"), by and between the CITY AND COUNTY OF HONOLULU (the "City") and the HONOLULU ZOOLOGICAL SOCIETY, a nonprofit corporation, organized and existing under the laws of the State of Hawai'i (the "Society").

WHEREAS, the City owns, operates and maintains the Honolulu Zoo, which features zoological, botanical, and cultural exhibits and support facilities for the education and enjoyment of visitors to and residents of Honolulu;

WHEREAS, the Society is a nonprofit organization with tax exempt 501(c)(3) status, governed by a volunteer Board of Directors and committed to providing financial support, volunteer resources, and community leadership, all in furtherance of its mission to foster an appreciation of our living world by supporting and advocating environmental education, recreation, biological study and conservation at the Honolulu Zoo;

WHEREAS, the Society offers various education, membership, volunteer, and research programs at the Honolulu Zoo;

WHEREAS, the City supports the Society's mission to educate the public about the importance of wildlife and conservation issues and to support the Honolulu Zoo through its programs and fundraising activities, and acknowledges that the Society's mission conforms with the requirements of Hawaii Revised Statutes § 102-2(b)(9) and Revised Ordinances of Honolulu § 28-3.3(f); and

WHEREAS, the City and the Society wish to enter into this Cooperative Agreement to define their respective areas of responsibility in furtherance of their common goals.

NOW, THEREFORE, the City and the Society hereby agree as follows:

1. Term. This Cooperative Agreement shall commence as of the Effective Date and shall continue thereafter for a period of five (5) years.

2. The Society's Use of Zoo Premises.

(a) Throughout the term of this Agreement, the Society is permitted the exclusive use of the trailer office located inside of Gate 2, subject to City's right to enter the trailer as provided herein this Agreement, and the non-exclusive right to use additional spaces within the Zoo to operate all Society programs, functions and administration, provided, such

activities do not impede the daily operations of the Honolulu Zoo, the Zoo Director, and Zoo personnel. A designated parking space will be provided to the Society's Executive Director; however, parking for Society employees other than the Executive Director shall be on an as-available basis. Except during City-approved special events at the Honolulu Zoo, Society employees are not allowed on Zoo premises after 6:00 p.m. due to safety reasons, unless otherwise authorized by the Zoo Director. The Society will reimburse the City for the estimated utility costs incurred on a monthly basis in connection with the Society's use of the trailer office; provided that the parties acknowledge that the utilities serving the trailer office are not separately metered and, therefore, such utility costs attributable to the trailer office use can only be a rough estimate. Accordingly, the parties agree that the Society shall pay to the City the amount of \$300.00 per month throughout the term of this Agreement and shall include such amount as a separate non-discretionary line item in the budget approved by the Society pursuant to Section 5(D) below. The Society, at its sole cost and expense, shall maintain areas solely occupied by the Society in a clean, sanitary and orderly condition. Once the Society's trailer office is separately metered, the Society will pay according to the meter.

(b) In the event that the Society is in material breach of its obligations under this Agreement, the City shall provide written notice to the Society stating the grounds of such default and the Society shall have thirty (30) days from the date of receipt of such notice to cure such default, or, if it is not feasible to cure the default within such 30-day period, then the Society shall diligently prosecute the same to completion within a reasonable time thereafter as agreed to by the City. If the Society fails to cure such default within such 30-day period (or prosecute the same to completion within a reasonable period thereafter as agreed to by the City), then the City shall have the right to terminate the Society's right to use and occupy the trailer office as provided in this Agreement upon thirty (30) days advance written notice to the Society.

(c) The City may unilaterally terminate, without cause, the Society's use and occupancy of the trailer upon ninety (90) days prior written notice to the Society.

(d) Notwithstanding anything to the contrary in this Cooperative Agreement, in the event that the City exercises its right to terminate the Society's right to use and occupy the trailer office as provided in this Agreement, then the Society shall have the right, in its sole judgment and discretion, to terminate this Cooperative Agreement upon ninety (90) days written notice to the City. In the event that this Agreement is terminated by the Society in accordance with this Agreement, then upon the effective date of such termination, the City and the Society shall have no further rights, duties or obligations to each other under this Agreement, except for those obligations which expressly survive the termination of this Agreement. For the avoidance of doubt, termination of this Agreement would result in the termination of the Society's obligation to perform any of the undertakings of the Society set forth in this Agreement, including but not limited to, the administration and operation of the education, volunteer, membership, conservation and research programs and services specified in Section 4 of this Agreement. Prior to or concurrently with the effective date of such termination, the Society shall surrender possession of the office trailer and other premises utilized by the Society within the Honolulu Zoo in broom-swept condition, reasonable wear and tear excepted, with all trade dress, computers, furnishings, fixtures, equipment and personal property removed.

3. Annual Review. This Cooperative Agreement shall be reviewed annually by June 1 of each year, at which time amendments and/or clarifications deemed necessary and/or appropriate by the City and the Society shall be incorporated into this Cooperative Agreement upon mutual agreement. Nothing contained in this Section 3 shall preclude the parties hereto from amending the Cooperative Agreement at any such other times throughout the calendar year as the parties may mutually deem necessary and/or appropriate.

4. Undertakings of the Society. Subject to the terms and conditions of this Cooperative Agreement, the Society shall be responsible for the development and maintenance of education, membership, conservation and research programs, membership and education program sales, fund raising, and volunteer training (for Society-related events only), recruitment and management; provided that such activities do not impede the operations of the Honolulu Zoo and do not violate any state law or city ordinance. In furtherance of the foregoing and subject to the terms and conditions of this Agreement, the Society will:

(A) Promote community support for, interest in and awareness of the Honolulu Zoo and the Society;

(B) Support the Honolulu Zoo in education, volunteer, research, conservation and membership programs and services, including: (i) development and administration of education programs to be conducted on and off the grounds of the Honolulu Zoo, including outreach to Title I schools; (ii) development and administration of a volunteer program in consultation with the Zoo Director, including the performance of various Honolulu Zoo and/or Society-sponsored projects and programs; (iii) development and administration of a membership program; and (v) development and administration of a research program;

(C) Conduct fundraising activities and/or projects for the benefit of the Society's programs as well as the Honolulu Zoo;

(D) Meet with the Zoo Director on a bi-monthly basis (or as otherwise agreed upon by the Executive Director and the Zoo Director) to review operational issues affecting the Zoo and/or the Society and address any outstanding requests of either party;

(E) Except as set forth in the schedule attached hereto as Exhibit A, obtain prior approval from the Zoo Director for use of the Zoo facilities, including the Hale Imi Ike room;

(F) Accept the appointment by the City of the Zoo Director to serve as a non-voting member of the Board of Directors of the Society;

(G) Submit to the City on an annual basis, within thirty (30) days upon Society's receipt of its financial statement prepared by a certified public accountant which details the Society's revenues, expenditures as well as assets and liabilities for the year ended;

(H) At City's request, the Society will negotiate in good faith with the City to enter into a mutually beneficial agreement that will detail the respective responsibilities of each

of the parties relating to marketing and internet-based systems (such as a consolidated website and social media) that involve the Society and the Honolulu Zoo. By December 15, 2011, all content of the current website, www.honolulu zoo.org, shall be approved by the Zoo Director prior to finalization;

(I) Have an employment manual or similar document to include the standard of conduct expected of Society's employees and volunteers, which shall require professional and courteous conduct at all times, and a policy on sexual harassment (as further set forth in Section 9 below), a copy of which shall be provided to the City within fifteen (15) days following the Effective Date. In addition, the Society shall conduct its business and render services without discrimination as to race, sex, creed or religion;

(J) Provide a certificate of insurance showing that the Society maintains a policy(ies) that includes the following coverages and terms for the duration of this Agreement and so long as the Society uses the Zoo premises for any of its activities:

(i) Workers' Compensation and Employers Liability Insurance. Workers compensation coverage shall be in accordance with State statutes. Employers liability limits shall be not less than \$100,000 each accident. Such insurance shall include a waiver of subrogation in favor of the City;

(ii) Commercial General Liability and Umbrella Liability Insurance. Maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with limits of not less than \$1,000,000 per occurrence and shall cover liability arising from premises, operations, independent contractors, personal injury and advertising injury, damage to premises with limits of not less than \$100,000, and blanket contractual liability to include business contracts. The City, its officers and employees shall be included as additional insured under the CGL and under the commercial umbrella, if any;

(iii) The policy must provide for (A) 30 days notice of cancellation (except for nonpayment of premium) and the Society shall promptly notify the City within 7 calendar days of receipt of any notice of cancellation and shall provide proof of reinstatement or replacement of such policy before such cancellation becomes effective and (B) be primary and non-contributory to any other insurance or self-insurance afforded to the City, its officers, and employees; and

(iv) The City has the right to require additional coverage that is available at commercially reasonable rates and as may be reasonably required by a prudent licensor due to special circumstances that may be presented by a Society-sponsored activity held at the Zoo;

(K) Allocate one percent (1%) of the annual gross sales proceeds from the Society's educational programs into its Conservation Fund;

(L) Deliver two (2) sets of keys of the Society's trailer office to the Zoo Director; provided that such keys shall only be used for emergency access to the Society office

and written notice of such emergency access (including "after the fact" notice if emergency circumstances do not permit advance notice to the Society) shall be provided to the Society, it being understood that the Society stores confidential information in the trailer office; and

(M) Appoint the Executive Director on behalf of the Society to communicate with the Zoo Director relating to the Honolulu Zoo and the respective undertakings of the Society and the City as set forth herein.

5. Undertakings of the City. The City shall maintain overall responsibility for Zoo administration, management and operations, including, without limitation, maintenance of the grounds and facilities, animal breeding, care and feeding, accreditation, health inspection, Zoo employee management, and fiscal administration and management of the Honolulu Zoo. The City agrees to:

(A) Grant to the Society a non-exclusive right to use the Honolulu Zoo grounds and facilities for fundraising, promotional and educational events, as set forth in the schedule attached hereto as Exhibit A and as may otherwise be approved by the Director of Enterprise Services or the Zoo Director acting on behalf of the Director of Enterprise Services;

(B) Provide four (4) sets of keys to the Society, which shall not be duplicated by the Society, and the Society shall provide the list of names of authorized users of the keys provided by the City and which must be returned to the Zoo at expiration or termination of the Cooperative Agreement or when new sets are provided to the Society. By providing the four (4) sets of keys to the Society, the Society understands and agrees that its access to Zoo facilities and Zoo grounds shall remain restricted to the regular operational hours of the Zoo and under no circumstances after 6:00 p.m., unless otherwise authorized by the Zoo Director.

(C) Prior to March 1st of each year or any other date mutually-agreed upon, the City will submit to the Society its annual operating budget for the Zoo, together with a detailed funding request for the following fiscal year (which specify the proposed use and requested amount), which funding request shall be reviewed by the Society and discussed with the Director of Enterprise Services and the Zoo Director. Prior to the commencement of the Society's fiscal year, the Society shall notify the Zoo Director of the items and amounts set forth in such request that have been approved by the Society (which shall include the utilities payment required in Section 2(a) above);

(D) Each year, upon the approval of the budget by Council and Mayor, the Zoo Director will provide the Society with the approved budget; and

(E) Repair and maintain the Zoo facilities, including but not limited to, the Hale Imi Ike classroom and birthday tent area, in clean, sanitary, and orderly condition, provided that the Society maintain and clean these areas after each use by the Society, repair any damages resulting from Society's use, and pay for the wear and tear based on Society's use of these areas.

(F) Provide free entry to the Zoo to Society members in good standing, provided that a current and valid Society membership card is presented upon entry. The number

of free entry(ies) and guest pass(es) to the Zoo to Society members shall be in conformance with the applicable "Membership Levels" of the Society member.

6. Cooperative Undertakings. In addition, the City and the Society mutually agree to work cooperatively to (a) undertake functions that the parties may agree are best performed cooperatively in order to advance the interests of the Honolulu Zoo and the parties' common goals, including, but not limited to, marketing, inter-zoo relations, and event planning, and to provide a harmonious working relationship with the contracted food and novelty concessionaire; (b) develop mutually beneficial strategies to increase public and private funding support for the Honolulu Zoo; (c) continually review and consider options for restructuring the relationship between the City, the Society and the Honolulu Zoo into one which will maximize opportunities to fulfill the mutual goals of the parties over the long term, including the systematic exploration of a private/public partnership and other similar arrangements in place in accredited zoos across the nation; and (d) regularly meet and discuss issues of interest affecting each party's performance hereunder and the best interests of the Honolulu Zoo. The parties shall use their best effort to respond to each other's requests and/or questions in a timely manner, at least within seven (7) business days, but not to exceed 14 calendar days, of receipt of the request/question. Society shall make its best effort to make timely requests to the Zoo given the response timeframes set forth herein.

7. Indemnification.

(A) By Society. The Society shall conduct its activities on Zoo premises so as not to endanger any person lawfully on Zoo grounds; and shall indemnify, save and hold harmless the City from any and all deaths, injuries, losses and damages to persons or property, and any and all claims and liabilities therefore occasioned wholly or in part by the acts or omissions of the Society, its employees, its officers, and agents; provided, however, the Society shall not be responsible for such portion of damages, if any, proximately caused by the negligence or intentional misconduct of the City. This obligation shall survive the expiration or termination of this Agreement.

With respect to the Society's volunteers, the rights, liabilities, if any, and/or duties regarding these volunteers shall be governed by Haw. Rev. Stat. ch. 90 and all applicable laws, regulations and/or ordinances related to volunteers.

8. Assumption of Risk/ Damage to City Property:

The Society shall assume the risk of any loss or damage to its property left on the premises, including but not limited to computers, printers, other electronic devices, or property of third parties with whom the Society has entered into a contractual relationship. Any damage to City property caused by the Society or its third party contractors shall be repaired by the Society to its original condition within three (3) months after the occurrence causing the damage; if the repairs are not made within the provided three (3) months, or if the Society so elects, the Society shall provide monetary reparations to the City for such repairs.

9. Sexual Harassment Policy. The Society and the City shall each have and enforce a policy prohibiting sexual harassment which sets forth the same or greater protection than those contained or required in ROH Chapter 1, Article 18. The sexual harassment policy for each of the City and the Society, in accordance with the ordinance, shall include, but not be limited to:

(A) Prohibitions against an officer's or employee's sexual harassment of the following:

- (1) Another officer or employee of the employer;
- (2) An individual under consideration for employment with the employer; or
- (3) An individual doing business with the employer;

(B) A provision prohibiting a management or supervisory officer or employee from knowingly permitting a subordinate officer or employee to engage in the sexual harassment prohibited under paragraph (A) above;

(C) A prohibition against retaliation towards an officer, employee, or individual who has complained of sexual harassment, conducted an investigation of a complaint, or acted as witness during an investigation of a complaint;

(D) A prohibition against a malicious false complaint of sexual harassment by an officer, employee, or individual;

(E) Provisions allowing an officer, employee, or individual to make a sexual harassment complaint to an appropriate management, supervisory, or personnel officer or employee;

(F) Procedures for investigating a sexual harassment complaint in an unbiased, fair, and discreet manner with appropriate safeguards to maintain confidentiality and protection from embarrassment;

(G) A provision requiring the use of the "reasonable person of the same gender standard," to determine if sexual harassment has occurred. Under the standard, sexual harassment shall be deemed to have occurred if the alleged offender's conduct would be considered sexual harassment from the perspective of a reasonable person of the same gender as the alleged victim. If the alleged victim is a woman, the "reasonable person of the same gender standard" shall be equivalent to and may be called the "reasonable woman standard";

(H) Disciplinary actions which may be imposed on an officer or employee who committed a prohibited act; and

(1) If the Society employs at least five (5) employees, a provision requiring the annual viewing of a video on the sexual harassment policy by each management or supervisory officer or employee.

The Society shall maintain the policy required under this subsection for the term of this Agreement. The action of signing this Agreement by each party shall constitute a pledge and acceptance of the provisions for sexual harassment policy as required by ROH, Chapter 1, Article 18.

10. Entire Agreement. This Cooperative Agreement contains all of the terms agreed upon by and between the City and the Society with respect to the matters covered herein, and supersedes all prior understandings with respect thereto.

(Signatures on the following page)

IN WITNESS WHEREOF, the City and the Society have executed this Cooperative Agreement as of the Effective Date.

CITY AND COUNTY OF HONOLULU

By Michael A. Ham
Director of Budget and Fiscal Services
jk w

HONOLULU ZOOLOGICAL SOCIETY,
a Hawai'i non-profit corporation

By [Signature]
Its PRESIDENT

APPROVED AS TO CONTENTS:

Randy M. Kay
Director of Enterprise Services
City and County of Honolulu

APPROVED AS TO FORM AND LEGALITY:

[Signature]
Deputy Corporation Counsel
City and County of Honolulu

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

)
) SS:
)

On Aug. 31, 2011, before me personally appeared JASON Y I-TO, to me personally known, who, being by me duly sworn or affirmed, did say that such person is the President of Honolulu Zoological Society, a Hawaii nonprofit corporation, and that the instrument was signed in behalf of the corporation by authority of its Board of Directors, and said officer acknowledged the instrument to be the free act and deed of the corporation.

Further, I certify, as of this date, as follows:

☐ Date of Document:

☒ undated at time of notarization

Number of Pages: 6 (if counterpart signature pages are subsequently attached, the document may have a different number of pages)

Document Description: Cooperative Agreement by and between City and County of Honolulu and Honolulu Zoological Society

Jurisdiction/Judicial Circuit Where Signed: First Judicial Circuit



Suzanne M. McAllister
Type or print name: Suzanne M. McAllister
Date: Aug. 31, 2011
Notary Public, State of Hawaii
My commission expires: Oct. 5, 2011

EXHIBIT "A"

1. Annual Fundraiser:
"ZooFari Gala" in September
2. Annual Summer Evening Shows:
"Wildest Show In Town" every Wednesday from June to August